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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Afghanistan prepared by the Special Rapporteur, Mr. Felix Ermacora, in accordance with Commission on Human Rights resolution 1990/53

I. INTRODUCTION

1. The Special Rapporteur was first appointed in 1984 by the Commission on Human Rights to examine the human rights situation in Afghanistan. Since then, his mandate has been renewed regularly by resolutions of the Commission which were endorsed by the Economic and Social Council and which requested the Special Rapporteur to report to the Commission on Human Rights and to the General Assembly. So far, he has submitted six reports to the Commission (E/CN.4/1985/21, E/CN.4/1986/2, E/CN.4/1987/22, E/CN.4/1988/25, E/CN.4/1989/24 and E/CN.4/1990/25) and six to the General Assembly (A/40/843, A/41/778, A/42/667 and Corr.1, A/43/742, A/44/669 and A/45/664).

2. Pursuant to Commission on Human Rights resolution 1990/53 and Economic and Social Council decision 1990/234, which extended his mandate for another year, the Special Rapporteur submitted in November 1990 an interim report (A/45/664) to the General Assembly containing preliminary conclusions and recommendations. After considering the report, the General Assembly adopted resolution 45/174 on 18 December 1990, in which it decided to keep under consideration, during its forty-sixth session, the situation of human rights in Afghanistan, in the light of additional elements provided by the Commission on Human Rights and the Economic and Social Council.

3. In keeping with his mandate, the Special Rapporteur has the honour to submit the present final report to the Commission on Human Rights. This report reflects the most important new elements which, in the opinion of the Special Rapporteur, have had a bearing on human rights since the presentation of his interim report (A/45/664) to the General Assembly in November 1990. The present update should therefore be considered together with the interim report.

4. In accordance with the practice he has always followed in the matter, the Special Rapporteur carried out two visits to the area in the course of his present mandate in order to obtain the most broadly based information possible. The first visit took place from 13 to 27 September 1990 (Pakistan from 13 to 22 September and Afghanistan from 22 to 27 September 1990), and its findings are reflected in the interim report to the General Assembly (A/45/664). The second visit of the Special Rapporteur took place from 2 to 6 January 1991 (Pakistan from 2 to 4 January and Afghanistan from 4 to 6 January 1991), in order to gather up-to-date information for the purposes of the present report.

5. During his last visit to Pakistan, the Special Rapporteur was received in Islamabad by the Chief Commissioner for Afghan Refugees. Also in Islamabad, he met with the representative of a non-governmental organization based in Peshawar. In addition, the Special Rapporteur met with the Ambassador of the Union of Soviet Socialist Republics to Pakistan.

6. In the North West Frontier Province, the Special Rapporteur visited the Kacha Garhi Refugee Camp, where he had talks with commanders and elders. He also interviewed newly arrived refugees from the Logar province. In addition, the Special Rapporteur had talks with commanders and elders of refugees living in Aza Khel.

7. While in Peshawar, the Special Rapporteur met with representatives of various humanitarian organizations and private individuals. He also had talks with a member of the recently established Commanders' Shura and with the leaders of one of the opposition parties based in Peshawar. During these consultations, the Special Rapporteur exchanged views on the overall situation in Afghanistan, with particular reference to human rights issues and prisoners.

8. During his visit to Afghanistan, in accordance with the programme established in consultation with the Afghan authorities, the Special Rapporteur was received by the Minister of the Interior, the Minister for State Security and the Minister for Repatriates' Affairs. He also had talks with representatives of the Ministry of Foreign Affairs.

9. In Kabul, the Special Rapporteur visited the Pol-i-Charkhi prison and the Juvenile Rehabilitation Centre (Dar-el-Taadib).

10. The Special Rapporteur wishes once again to express his sincere appreciation of the valuable assistance and full co-operation he has received, despite the limited time available to him, from the governmental authorities of the two countries visited.

11. Chapter I of this report evaluates the present situation of human rights in Afghanistan with special emphasis placed on the situation of refugees,

which the Special Rapporteur continues to consider as a paramount human rights problem. This chapter also describes the human rights situation in government-controlled areas and in areas not under government control, as well as the question of human rights in the light of the armed conflict and the question of self-determination. Chapter II contains the conclusions and recommendations which the Special Rapporteur has drawn from the analysis of the additional information he has gathered recently.

12. In addition to gathering information during the visits to Pakistan and Afghanistan, with a view to informing the Commission on Human Rights and the General Assembly in the most impartial and objective manner possible, the Special Rapporteur followed the course of events throughout the period covered by the report, i.e. since the extension of his mandate in March 1990, and systematically evaluated written and oral information relevant to his mandate received from various individuals and organizations.

13. In preparing this report, the Special Rapporteur has consulted various reports prepared by United Nations bodies and specialized agencies, as well as those by non-governmental organizations, dealing with the humanitarian aspect of the Afghan problem.

II. EVALUATION OF THE PRESENT SITUATION OF HUMAN RIGHTS IN AFGHANISTAN

A. General

14. As long as there is no political dialogue between all parties to the conflict which brings so much suffering to the people in the region, and which is becoming increasingly fratricidal in character, there is little hope that it may be terminated in the near future. The current discussions about a political solution of the conflict are of a limited nature, since all parties to the conflict did not participate at the same time.

15. Thus, the conflict is still continuing and all the problems of human rights and humanitarian law that have characterized it so far persist, namely:

(a) The existence of more than five million refugees who make up one third of the world refugee population;

(b) The armed conflict between the Government, which is defending its authority and law and order in its territory, and a multitude of armed opposition forces;

(c) The governmental policy to maintain law and order in a war-like situation;

(d) The power struggle between representatives of opposition forces;

(e) The power struggle between certain armed groups and their commanders;

(f) The continuing political interest on the part of the super-Powers in this conflict.

16. As a result of the above, human rights are jeopardized, humanitarian law is frequently ignored, and the right to self-determination cannot be genuinely and freely exercised. All this must be considered in the context of a third world country which is still in the process of development.

17. It must be emphasized that human rights, as enshrined in the principal international instruments, and humanitarian rights and obligations as enshrined in the body of humanitarian law, are binding on all parties to the conflict. As the Special Rapporteur has stated in his previous reports, they are also binding on the opposition movements, in accordance with article 3 of the Geneva Conventions. Therefore, the Special Rapporteur has a set of well-defined criteria for ascertaining facts in the light of human rights instruments and humanitarian law.

18. Before entering into greater detail, the Special Rapporteur would like to reiterate the fact that the present report should be read in conjunction with his report to the General Assembly (A/45/664). The Commission should also bear in mind that the recent situation in Afghanistan must be viewed against the background of the meteorological conditions prevailing in winter. Many parts of the country are covered in snow and numerous roads are blocked. Therefore, refugees who might have wanted to return are unable to reach such areas. Repatriation is expected to increase as the weather becomes warmer. Armed hostilities have subsided over the past months.

19. It should further be noted that the period November 1990 to February 1991 has been used by all sides for various political activities. Some of these political events are further discussed in the context of human rights issues:

(a) Mujaheddin commanders, including Ahmad Shah Massoud and Amin Wardak, discussed a unified strategy for military operations inside the country and decided, inter alia, to establish nine administrative zones. Their meeting ended on 14 October 1990;

(b) On the occasion of Commander Massoud's visit to Pakistan in October 1990, an agreement was signed between the Hesb-i-Islami and Jamiat-e-Islami parties, to resolve their internal conflicts through elections;

(c) The President of the Republic of Afghanistan paid a widely commented visit to Geneva starting on 18 October 1990, where he met personalities from moderate opposition groups, a representative of the former King of Afghanistan, and the former United Nations Co-ordinator for Humanitarian and Economic Assistance Programmes relating to Afghanistan (Operation Salam), Sadruddin Aga Khan, as well as Swiss parliamentarians;

(d) On 9 November 1990, the former King, Zaher Shah, proposed a plan for the political settlement of the Afghanistan issue (see para. 79);

(e) Following a visit to Afghanistan, Professor Mojaddidi, President of the Alliance of Mujaheddin, the so-called Afghan Interim Government (AIG), held a press conference in Peshawar on 27 November 1990, commenting on the visit and announcing that an election plan had been published by the AIG Election Commission and rejecting allegations that he or his representatives had met the Afghan President in Geneva. He also described the election agreement between the Hesbe and Jamiat parties as "not reasonable";

(f) On 2 December 1990, the AIG announced an election plan, indicating that the process of elections in areas under its control should be completed by 18 March 1991.

20. Three substantive documents concerning the present political and human rights situation in Afghanistan were published before this session of the Commission:

(a) The report of the Secretary-General of 17 October 1990 on the situation of human rights in Afghanistan and its implications for international peace and security (A/45/635);

(b) The Third Consolidated Report of the United Nations Co-ordinator for Humanitarian and Economic Assistance Programmes relating to Afghanistan;

(c) The interim report of the Special Rapporteur to the General Assembly concerning the human rights situation in Afghanistan (A/45/664).

B. The situation of refugees

21. In his report to the General Assembly, the Special Rapporteur has indicated that there was a certain trend of refugees to return. The United Nations, in co-operation with the authorities of Pakistan, established a pilot project on voluntary repatriation to Afghanistan for the period 15 July to 15 October 1990. This pilot project has been extended to March 1991. For its part, the Government of Afghanistan expressed its readiness to facilitate the return of refugees by allocating a special budget, setting up guest houses and providing transportation. The Government also issued several decrees concerning refugees (see para. 32).

22. Since September 1990, about 25,000 refugees have returned to Afghanistan under the pilot project. The total so far, however, is estimated at only about 70,000. The Afghan Minister for Repatriates' Affairs stated that an average of 200 persons were returning daily from the Islamic Republic of Iran.

23. The process of repatriation has been, and still is, hampered by the resistance of opposition parties as well as armed groups within Afghanistan. The Special Rapporteur has already informed the General Assembly of cases where returnees have been intercepted and sent back to Pakistan (see A/45/664, para. 34). The Special Rapporteur has also reproduced two declarations concerning the repatriation of refugees (A/45/664, annexes I and II).

24. During his recent visit to the region, the Special Rapporteur received credible information on other cases of impediments to the return of refugees as follows:

(a) In November 1990, 10,000 families from Nangarhar province had tried to return, but were stopped in Kunar near Nawab castle by armed groups belonging to the Hesb-i-Islami opposition party as well as Wahabis, and were forced back to Pakistan;

(b) Five Hesb-i-Islami and Ittihad-i-Islami opposition groups, each comprising 25 members, were allegedly operating in Garghi and Maydan with the aim of preventing resettlement;

(c) New check posts were installed by the opposition forces along the route to Ali Masjed, in Torkham, Salman, Ghandab and Naiwa Gei, to control the return of refugees crossing the Pakistan border. It is alleged that there is a member of the opposition groups at each of the check posts;

(d) In September 1990, 10 families from Sada camp were stopped, their property was confiscated, they were beaten and tortured by the Islamic Regiment of Ittehad-i-Islami, and forced to return to their camp in Pakistan.

25. As stated by the Special Rapporteur in his report to the General Assembly (A/45/664), even representatives of the so-called Afghan Interim Government (AIG) do not deny that there have been thousands of cases of this kind. It is obvious that such practices cannot be considered as being in conformity with article I of Instrument II of the Geneva Agreements (see S/19835, annex I). It would appear that refugees residing in the North West Frontier Province (total number of registered: 2,239,032) are subjected to greater pressures not to return than those living in Baluchistan (total registered: 840,467). It also appears that unregistered refugees find it easier to move back and forth across the border than those who are registered. Also, the social services available to them as well as income-generating employment in Pakistan represent an economic motivation for refugees to stay. The Special Rapporteur was informed about economically motivated migration of persons belonging to the Shi'ite Hazara ethnic group from central Afghanistan to Iran via Pakistan. A certain movement of refugees within Pakistan from camps to cities near which they are located and beyond has also been reported, and accounts for a so-called "floating" refugee population.

26. It has not been possible for the United Nations High Commissioner for Refugees to pursue the planned airlift of refugees between Herat and Balkh provinces, and aid from international organizations has decreased. The Afghan Government has therefore proceeded with the airlift on its own, and has been obliged to allocate military aircraft for this purpose. So far, 740 refugees have been transferred in this way from Herat to Kabul and 1,004 persons were transported from Herat to Balkh. The guest house in Herat is currently overcrowded, with 7,000 returnees awaiting transportation to their final destination.

27. Concerning camps in Pakistan, the distribution of subsistence rations of staple goods is on the decrease. The reasons for this may not only be a general reduction of international aid but also a desire to encourage refugees to become self-reliant.

28. The Special Rapporteur thought it worth while to report one incident which illustrates the unrest and poor conditions in which the refugees are obliged to live. In his previous reports, he informed United Nations bodies about the fate of women and children in refugee camps (see in particular A/44/669). The widows' camp located within the Nasir Bagh refugee camp near Peshawar was the most telling example. After a series of incidents which started in February 1990, following inflammatory statements made during morning prayers at the camp mosque on 26 April 1990, a large crowd of 5 to 6,000 refugees looted and destroyed the property of "Shelter Now International", an international volunteer relief organization which has worked in Afghanistan since 1982. Over 175 tons of powdered milk worth $US 300,000, destined for refugee children, were stolen, a vehicle workshop was looted and set on fire and 19 vehicles worth $US 200,000 were stolen or

destroyed, among which were 15 cars and land cruisers donated to the organization by the United Nations High Commissioner for Refugees. The programme concerning widows was attacked vehemently and the facilities destroyed and, as a result, the widows' camp was closed down. The widows were placed either with relatives or with their fellow tribesmen or persons known to them.

29. Another example of insecurity in the camps was reported from Teri Mangal where, on 29 October 1990, four bombs, including two napalm bombs, were dropped by the Afghan airforce, injuring several persons and destroying shops and vehicles. Later the same day, SCUD missiles fired by Afghan Government forces killed eight persons. During the same month, a SCUD missile killed two persons three kilometres from Teri Mangal, and on 22 November 1990, a bombing raid was carried out by MIG aircraft two kilometres inside the border, at Paklia (Palikhel). It may be concluded that security remains unsatisfactory and represents a potential risk for any cross-border traffic, including repatriation.

30. An additional reason for refugees not to return has been the intensive bombing raids of the provinces of Uruzgan, Nangarhar and, in particular, Logar by government forces using SCUD, BM-12 and BM-40 (Uragan) missiles.

31. The number of Afghan refugees in Pakistan is still estimated at 3,277,554. The number of those who have returned to Afghanistan cannot be determined with any precision, and estimates differ on the Pakistani and Afghan sides. The Chief Commissioner for Refugees of Pakistan gave a figure of 69,174 (i.e. 13,274 families) as having returned to Afghanistan since 25 July 1990. The Minister for Repatriates' Affairs of Afghanistan stated that 12,728 families had returned by 11 December 1990 and that the total of returnees from all over the world amounted to 300,000, not including those who were repatriated under the pilot project. He added that the Government had received requests from 110,000 Afghan families currently residing in the Islamic Republic of Iran to return. The Afghan Government was considering these requests, with a view to ensuring the necessary facilities and land for the returnees.

32. The Afghan authorities have issued various decrees concerning facilities for persons returning under the policy of national reconciliation. An English translation of these texts is now available, which enables a better understanding of the measures to be implemented. The following decrees are of particular interest:

(a) Decree No. 322 of 6 March 1987, concerning the remission of personal tax and taxes on farmland, shops, private businesses, and rental of Government-owned shops;

(b) Decree No. 56 of 5 May 1987, concerning remission of dues as taxes on residential buildings and those for sanitation purposes, electricity and water consumption, telephone, telex and postal boxes, as well as minor interest on loans and additional loans taken out by returnees ("Tikitana");

(c) Resolution No. 56 of 19 May 1987, concerning the readmission of returnees previously studying in professional and technical vocational training colleges and in institutions of higher education;

(d) Decree No. 328 of 10 March 1987, concerning the remission of "Tikitana" taken out from the Agricultural Development Bank by farmers and members of agricultural co-operatives for the purchase of chemical fertilizer, improved seeds, and agricultural tools and machinery;

(e) Decree No. 295 of 29 October 1987, concerning facilities for Afghans living in exile to return to their homeland and visit their relatives and families on a temporary or permanent basis;

(f) Decree No. 316 of 27 November 1987, concerning dispensation of dues on weapons, ammunition and other arms in the possession of returnees;

(g) Decree No. 321 of 6 December 1987, concerning the restitution of property to returnees.

33. It has not been possible so far for the Special Rapporteur to study the effectiveness and extent of implementation of these decrees and resolutions.

34. In this context, it should be mentioned finally that, during the period under consideration, a new flow of refugees entered Pakistan as a result of military activities in Afghanistan. After heavy shelling and bombing raids in Logar province, it is estimated that about 800 families, or 56,000 persons, sought refuge in Pakistan towards the end of 1990. The Special Rapporteur interviewed the elders from this province at Kacha Gari and Aza Khel camps.

C. Human rights in government-controlled areas

35. In November 1990, the Special Rapporteur informed the General Assembly of the facts concerning the control of Afghan territory. The area around Kabul as well as the main cities and villages, highways and airports are in effect controlled and administered by the Government. All but two provincial capitals (Kunar and Uruzgan provinces) are under government control, and civilian life in many of these areas is relatively normal. However, a large part of the territory is not under the control of the Government but under that of various armed groups and commanders.

36. In view of the short length of time available to the Special Rapporteur to visit the area, he was only able to make an in-depth study of the situation concerning the right to liberty and the security of individuals.

Right to liberty and security of individuals

37. Time and again, opposition forces have made allegations that the number of prisoners detained by the Government is much higher than that reported by the Special Rapporteur. The Hesb-i-Islami party has estimated that there were approximately 20,000 political prisoners. They claimed that 8,000 political prisoners were being held in Pol-i-Charkhi prison and about 15,000 in the provinces. They also claimed that 18,000 Afghan children were being held abroad. In addition, they indicated that there were many more detention centres allegedly existing in and around Kabul than those visited by the Special Rapporteur. The following places of detention in and around Kabul were named: Pol-i-Charkhi prison, the Prime Minister's residence, the Shashtarak interrogation centre, the Military Department and Departments 1 (Deh Sabz), 2 (Sharinau), 5 (Dailaman), 7 and 12 (Sharinau, where women are allegedly detained) of the Khad (internal security police).

38. The Special Rapporteur has again received allegations that the actual number of prisoners in Afghanistan is much higher than the figures provided by the Government. The Special Rapporteur is not in a position to verify this assertion which contradicts his earlier findings nor has he received substantive evidence in this regard.

39. As this report was being finalized, the attention of the Special Rapporteur was drawn to a communication addressed to the United Nations Voluntary Fund for Victims of Torture, containing a list of 447 alleged torture victims for the years 1986 to 1990, who had sought help at the Psychiatry Centre for Afghans in Peshawar. The Special Rapporteur intends to revert to allegations concerning incidents reported to have occurred after 1990 in his next report.

40. The system of security in Afghanistan is clearly divided between the Ministry of State Security and the Ministry of the Interior. The Minister of the Interior indicated that the total number of prisoners in the country was 4,261, of whom 2,530 were political prisoners and 1,731 criminal prisoners. Of this total, 94 were female, of whom 10 were political. Pol-i-Charkhi central prison contained 2,580 prisoners, of whom 1,699 were political and 850 criminal prisoners. There were also 31 females, including three political prisoners. Of the prisoners detained at Pol-i-Charkhi, 31 were foreigners (24 Pakistanis, 5 Arabs, 1 Iranian and 1 Malaysian).

41. The Special Rapporteur reported to the General Assembly about the general and individual amnesty decrees (see para. 45). Since September 1990, 30 individual amnesties were granted. A total of 54 persons were released, including 6 foreign prisoners.

42. During his recent visit to Pol-i-Charkhi prison, the Special Rapporteur was able to talk freely with two prisoners whom he had requested to see. Two other prisoners whom he wished to see, however, could not be found, possibly due to misspelling of their names or insufficient information.

43. Following the visit to foreign prisoners held at Pol-i-Charkhi, mentioned in the Special Rapporteur's report to the General Assembly (A/45/664, para. 47), he had requested the prison authorities to refrain from carrying out any reprisals against them as a result of their frank statements concerning the conditions of their detention. The prison authorities had assured the Special Rapporteur that they would respect this wish. During his last visit to Pol-i-Charkhi prison, the Special Rapporteur was able to speak with an Iraqi prisoner, who appeared to be acting as spokesman for the foreign prisoners detained there. This prisoner confirmed that no reprisals had been carried out, but that the quality of the food had deteriorated. The latter complaint was contested by the prison authorities and was not confirmed by representatives of the International Committee of the Red Cross. In view of the harsh winter conditions prevailing in the region, the Special Rapporteur deplored the fact that the central heating system was not functioning, since electric heaters were insufficient to heat large cells.

44. The Special Rapporteur was able to visit for the second time the Dar-el-Taadib juvenile rehabilitation centre. From 1981, this centre was administered by the Ministry of State Security, but in 1990 it was placed under the administrative authority of the Ministry of Justice. The full transition as regards its legal and personnel status is due to be completed by 21 March 1991.

45. The Dar-el-Taadib juvenile rehabilitation centre caters for adolescents between the ages of 13 and 18. Children under 14 years of age are treated in accordance with a special law on children. At the time of the Special Rapporteur's visit, the centre had 157 inmates, 11 of whom had been convicted under the State security law. The figure included six females. The Special Rapporteur was informed that the internal regulations of the centre were currently under revision by the Ministry of Justice. The conditions of the young inmates were described as being much more flexible than those prevailing in ordinary prisons. Family visits were reported to be allowed on Fridays, and relatives could bring food and other authorized items. It was stated that the adolescents can be, and have been, pardoned under amnesty decrees. The Director assured the Special Rapporteur that the United Nations Convention on the Rights of the Child would be respected. The Special Rapporteur was also informed that corporal punishment was totally excluded as a disciplinary measure. The centre appeared to have a full education programme.

46. In view of the limited time available to him, the Special Rapporteur was unable to interview inmates and discuss their problems. It was obvious to the Special Rapporteur that all the premises of the centre required a complete renovation. The overcrowded dormitories, as well as the kitchen and dining room were in a state of neglect that will require the particular attention of the Government. Over the years since he was entrusted with this mandate, the Special Rapporteur had come to understand that such facilities could not be judged by Western standards. Recognizing this, and comparing these conditions with those prevailing in the Perwarishgahi Watan Institute (see below), it may be remarked that adolescents in the Juvenile Rehabilitation Centre could hardly find the atmosphere propitious to rehabilitation.

47. In this connection, the attention of the Commission should be drawn to claims on the part of representatives of the opposition that more than 18,000 Afghan children are being detained in the Union of Soviet Socialist Republics. The Special Rapporteur raised this question with Soviet diplomats, who stated that there could be about 3,000 Afghan orphans in the Union of Soviet Socialist Republics. In his previous reports to the General Assembly, the Special Rapporteur examined this problem in the context of the Perwarishgahi Watan Institute. It would be necessary to obtain more information concerning the circumstances surrounding so-called Afghan orphans who are studying and working in the Union of Soviet Socialist Republics.

48. In view of the interest expressed by the Afghan Government in combating drug abuse and drug trafficking, the Special Rapporteur drew the attention of the prison authorities and the Director of the Dar-el-Taadib juvenile rehabilitation centre to this problem. The competent authorities explained how the respective laws, prison regulations and administrative practices were applied to combat possible drug abuse in detention centres. The Special Rapporteur is of the opinion that this problem falls within the ambit of human rights (article 12 of the International Covenant on Economic, Social and Cultural Rights - the right to health). Since allegations of drug abuse in detention centres have been made, the Special Rapporteur would like to emphasize that all possible measures should be taken to avoid this problem.

49. The Special Rapporteur has informed the General Assembly about the situation of prisoners under the control of the Minister for State Security (see A/45/664, para. 49). In Kabul at the time of his visit, 204 persons were under interrogation and 219 awaiting trial. Among persons who allegedly took

part in the attempted coup of March 1990, 317 were awaiting sentence, pending completion of their trials, while 150 others are said to have been released at various stages of the investigation or have already been acquitted.

50. During his visit to Afghanistan at the beginning of January 1991, the Special Rapporteur drew the attention of the Minister for State Security to the fact that the International Committee of the Red Cross (ICRC) had not obtained access as yet to prisoners under the authority of the Ministry of State Security, which represented a very unsatisfactory situation. The Minister authorized the Special Rapporteur to state in his report to the Commission on Human Rights that such authorization would be given to the ICRC within one month, and invited him to apprise the ICRC representatives accordingly. At the time of the finalization of this report, the ICRC had still not been given access to these prisoners.

51. The Minister for State Security reminded the Special Rapporteur that, despite the Afghan Government's willingness to respect human rights and its commitments in this regard, it was necessary to take the war situation into consideration. Under such circumstances, it might not be possible to adhere strictly to the human rights provisions concerning personal liberty, in the interest of State security. The Special Rapporteur replied that a balance had to be found between respect for human rights and the requirements of State security, which must be governed by those inalienable rights which may not be abrogated even at a time of public emergency (see the International Covenant on Civil and Political Rights, article 4).

Other human rights issues

52. As regards other civil and political rights, such as the right to freedom of expression, the right to education and the right to religious freedom, the Special Rapporteur would like to refer to his recent report to the General Assembly (A/45/664 paras. 58 to 64). However, there is one additional aspect. Concerning the right to freedom of religion, the following comment on his report to the General Assembly appeared in the Afghan News of 1 January 1991, published by the opposition party Jami'at Islami Afghanistan: "The United Nations reporter said freedom of religion is exercised in Kabul and he did not receive any complaints about restrictions on the practice of religion. Ermacora's view about freedom of religion in Kabul is based on a purely Western interpretation of religion which is limited to personal belief and worship. For Moslems, however, religion is a complete way of life. Allowing a Moslem to say his prayers does not return to him his full religious freedom". The Special Rapporteur wishes to point out to the Commission that his perception of the freedom of religion is based on the understanding of the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed by the General Assembly on 25 November 1981 (resolution 36/55).

53. With regard to economic, social and cultural rights, the Special Rapporteur has no other information than that presented to the General Assembly (A/45/664, paras. 65 to 68).

54. As far as the situation of juveniles is concerned, the Commission may wish to note that the Republic of Afghanistan is a signatory to the Convention on the Rights of the Child, which was unanimously adopted by the General Assembly on 20 November 1989 and entered into force on 2 September 1990.

D. Situation of human rights in areas not under government control

55. The Special Rapporteur wishes to refer to his report to the General Assembly (A/45/664, paras. 69 to 82), and should like to recall that in September 1990, with the consent of the Government, he had the opportunity for the first time to visit areas which were not entirely under its control. The Special Rapporteur visited parts of Kunar and Kandahar provinces. As concerns the areas he was able to visit, it is doubtful that a genuine administrative structure exists there. Many of these areas are depopulated. Parts of some provinces are administered by representatives of traditional forces from among the opposition groups. In his report to the General Assembly, the Special Rapporteur made special reference to Kunar province, where schools and medical facilities exist. Reference must also be made to the Third Consolidated Report of the United Nations Co-ordinator for Humanitarian and Economic Assistance Programmes Relating to Afghanistan (UNOCA) which covers the situation in the various provinces. Another report worthy of interest, prepared jointly by the United Nations High Commissioner for Refugees (UNHCR), WFP, World Health Organization, UNOCA and MCPA, is the "UNHCR Report on the Monitoring Mission to Paktia from 23 to 30 September 1990". It provides detailed information on the refugee situation in the province, returnees to the province, the obstacles they encounter at border crossings, bombing raids made on them, as well as the economic situation of returnees and their most urgent needs. The annex to that report examines the situation in 13 villages or districts of Paktia province and provides impressive insight into the population, the percentage of returnees, the magnitude of destruction and its victims, as well as the extent of reconstruction. This study may be considered as a model of its kind. It is evident that only by systematically visiting the provinces may a clear picture be obtained of the realities in territories not under government control.

56. No new information has come to the attention of the Special Rapporteur that would change his previous findings. However, more detailed information concerning the human rights situation in the above-mentioned areas may be found in the Third Consolidated Report of the United Nations Co-ordinator for Humanitarian and Economic Assistance Programmes Relating to Afghanistan, and the report of the United Nations High Commissioner for Refugees on the Monitoring Mission to Paktia, 23 to 30 September 1990. These reports show that only certain parts of the territory not under the control of the Government have been repopulated.

57. The Special Rapporteur was informed that the Government had carried out heavy bombing raids towards the end of 1990, in areas not under government control, i.e. the provinces of Logar, Uruzgan and Nangarhar, as well as the provincial capital of Zabul province, Qalat. Hostilities were also reported to have taken place around Kabul and Wardak, which have affected the civilian population.

58. In November 1990, villages in several districts of Logar province predominantly populated by farmers, including Denau, Mogol Hel and Zargun Har in Mohamad Agha district and villages in Puli Alam district, were bombed and destroyed by the Afghan airforce. All these villages are on the strategically important road from Kabul to Gardez and were in the hands of opposition forces. The bombings were carried out by SCUD missiles and BM-12 and BM-40 (Uragan) long-range missiles. Bombing raids were also reported to have taken place in Sorhot, near Jalalabad in Nangarhar province. The Special Rapporteur

was also informed that families were leaving the Khogiani, Kama and Behsud areas of Nangarhar province. It has been reported that these villages have been bombed two or three times per day. Witnesses told the Special Rapporteur that between 300 and 500 persons were killed during these raids, and 600 to 700 wounded. There has been a massive exodus from the area. The figures supplied to the Special Rapporteur range from 500 to 800 families up to 1,300 families, who have fled to Pakistan and settled in various refugee camps. The Special Rapporteur interviewed members of 1,120 families now living in one camp.

59. As stated in paragraphs 19 and 79, the commanders' meeting of October 1990 decided to establish nine administrative zones throughout the country. The Special Rapporteur has no information regarding the realization of this plan and does not know whether any administrative units have already been established or whether schools and hospitals have been set up in these areas. He is still of the opinion, however, that few areas under the control of the commanders have a genuine administrative infrastructure.

60. It is the Special Rapporteur's opinion that the existence of detention centres of the opposition forces on Afghan territory is quite probable, but he has no concrete information concerning their location, the number of persons detained or the treatment accorded to them. So far, there have only been speculations on the subject.

E. Human rights in light of the armed conflict

61. It is quite clear that humanitarian law and human rights instruments call for particular respect of the civilian population (Fourth Geneva Convention of 12 August 1949), the right to life and humane treatment (article 3 of the Geneva Convention), and for the respect of prisoners (Third Geneva Convention). They also forbid all acts of terrorism. (For the definition of terrorism under the terms of the First Additional Protocol to the Geneva Convention of 12 August 1949, see A/43/742, paras. 118 to 121 and A/44/669, para. 8.)

62. In this respect, the Special Rapporteur has received new information concerning the following incidents, which have taken place since October 1990.

63. Civilian casualties have been registered in the Logar province, due to hostilities between the Afghan army and armed opposition groups, as well as in Shomali and Bagram, where operations were carried out in retaliation against an opposition rocket attack on Bagram air base on 27 November 1990. As a result of mopping-up operations, hundreds of families have left the Paghman area. Civilians have also been killed in Zabul province, due to the armed conflict in the region.

64. The Special Rapporteur did not visit any hospitals during his recent visit to Pakistan and Afghanistan, but was apprised of the activities of the International Committee of the Red Cross (ICRC) hospitals in both countries. He was informed that co-operation with the competent authorities was good and that the ICRC had been able to extend its humanitarian work in Afghanistan. It has been indicated that the number of wounded treated in Peshawar has slightly decreased, while the hospital in Quetta has increased its activities as a consequence of improved evacuation of the wounded and the opening of an additional first aid post in Kandahar city. The number of patients at the ICRC hospital in Kabul has been reported as stable.

65. The Special Rapporteur was informed by reliable sources of massive summary executions of Afghan soldiers and civilians by armed opposition groups. When the Tarin Kot garrison, in Uruzgan province, surrendered in September 1990, it is reported that approximately 200 persons, including women and children, belonging to families of Afghan army personnel were summarily executed in the Noor valley between Kandahar and Uruzgan province by armed opposition groups under the command of Abdul Alim, a member of the party headed by Gulbuddin Hekmatyar. Among them were about 100 soldiers from the garrison, who are reported to have been executed on the spot. The Special Rapporteur also learned that these executions had been photographed by Wahabi groups.

66. In addition, the Special Rapporteur was informed that, on 19 October 1990, 174 persons belonging to a militia group and the Afghan armed forces were executed on the spot, following the battle of Qalat as they were transporting supplies from Kandahar to Zabul, by the same opposition groups that carried out the executions in Uruzgan. Swords were used to behead the victims. News of this incident was broadcast by Voice of America on 25 October 1990.

67. In Kandahar province, opposition groups laid mines in the path of a group of elders on their way from Spin Boldak, who had taken the initiative to try to mediate in negotiations on a cease-fire between Government troops and various opposition groups. Furthermore, it is reported that clashes have erupted between opposition groups, resulting in numerous deaths. Since 1 July 1990, 1,759 members of opposition groups were reported to have been killed, including 71 commanders and 12 children, and 1,985 persons wounded.

68. The Special Rapporteur asked the Afghan authorities whether any participants in the attempted coup of 6 March 1990 had been executed. He was informed that no summary executions had taken place during the suppression of this coup, and that the only deaths had occurred during the actual hostilities.

69. Acts of terrorism have continued. Figures for the period up to July 1990 are reflected in the report of the Special Rapporteur to the General Assembly (A/45/664, para. 87). Since July 1990, 1,918 rockets, mostly Saccas fired from a distance of 28 to 30 kilometres, have been fired on Kabul, causing 474 deaths and 1,497 wounded. Representatives of opposition groups have stated that their attacks on Kabul are directed at military targets. However, the Special Rapporteur is an eyewitness that such attacks, regardless of their target, mostly hit the civilian population. Representatives of opposition forces have, on occasion, even denied that rocket attacks may be imputed to their forces. The Special Rapporteur finds it difficult to believe such statements.

70. The situation of prisoners-of-war remains rather precarious. The opposition claims that thousands of prisoners are still detained in the Union of Soviet Socialist Republics. This is firmly denied by Soviet representatives. The Special Rapporteur cannot investigate this matter. On the other hand, it has been said that a number of Soviet prisoners are still detained by the opposition forces. The alleged total of approximately 300 Soviet prisoners cannot be verified. However, the Special Rapporteur has received credible information, according to which some 25 Soviet soldiers are in the custody of various opposition groups. It is quite understandable that the relatives of these prisoners wish to obtain information concerning their

whereabouts and to exchange correspondence with them. Regrettably, it appears that these prisoners are being used as hostages. According to the most recent and trustworthy information, the opposition forces would be prepared to release one Soviet prisoner in exchange for 100 imprisoned Mujaheddin. Serious efforts will be required to resolve this sad chapter of the Afghan conflict. In the opinion of the Special Rapporteur, such an exchange of prisoners would be made easier if representatives of the opposition forces were willing to negotiate the subject with the Afghan authorities.

71. Another matter of concern is the fate of foreign prisoners held in Afghan gaols. The Special Rapporteur has received a list of names of convicted foreign prisoners, but those of foreign prisoners under interrogation (four Pakistanis, one Iraqi and three Iranians) have not been made available to him.

72. The Special Rapporteur has been informed that a number of Afghan prisoners who had been detained in Pakistan were released on 7 January 1991, and he welcomes this important humanitarian gesture.

73. Finally, there is the question of prisoners held by opposition forces who appear to be Mujaheddin belonging to rival groups. The Special Rapporteur has heard rumours according to which thousands of such prisoners are detained in certain camps of opposition forces. Although this problem also falls under the Geneva Conventions, the Special Rapporteur has been unable to visit these prisoners or to obtain additional information about them.

F. Self-determination

74. United Nations resolutions have consistently called for the guarantee of the right to self-determination for the Afghan people. Part of the objective to attain self-determination may have been achieved through the withdrawal of foreign troops. Their withdrawal has changed the focus of this objective.

75. However, the right to self-determination must also be understood as the right of a people to freely choose its political status and the liberty to pursue its economic, social and cultural development in accordance with this choice. In its evaluation of article 1 of the International Covenant on Civil and Political Rights, the Human Rights Committee made it clear that, in promoting the realization of this right, Governments shall institute the procedure by which this right may be exercised.

76. The exercise of this right must also encompass the possibility of the refugees to return and to participate in the process of choosing their political and social system.

77. Apart from the problem of refugees and their right to freely return to their homes, elections are the most common method for exercising this right when it is understood as internal self-determination.

78. In the present situation of Afghanistan, the exercise of the right to self-determination is closely linked with the armed conflict in the country. It would appear at the moment that both the option of continuation of armed conflict and that consisting in a political solution are being pursued. The United Nations and the representatives of many Governments have pleaded for a political solution of the conflict as the condition required for the free exercise of the right to self-determination. Self-determination goes hand-in-hand with the search for a political solution.

79. According to the monthly bulletin of the Afghan Information Centre, published by the opposition forces, dated November-December 1990 (Nos. 116-117), all the parties involved in the situation claim in one way or another that they want a political solution:

(a) During the commanders' meeting held in October 1990, it was decided that the tribes, religious scholars and intellectuals of Afghanistan should independently initiate the formation of councils in the country. An agreement was signed between the Jamiat (Massoud) and Hezb (Hekmatyar) opposition parties to resolve their internal conflicts through elections in areas under their control;

(b) On 9 November 1990, Ex-King Zaher Shah proposed a plan for the political settlement of the conflict, according to which an inter-Afghan understanding should be created at the national level. An Afghan commission composed of approximately 30 pro-Jihad personalities should be established, with a view to preparing a list of persons to attend an emergency Afghan Jirgah. These persons should include representatives of all Mujaheddin and pro-Jihad Afghan organizations, well-known Islamic scholars, political personalities, tribal leaders (local and nomad) and all influential figures in Afghan society both inside and outside the country. The United Nations would provide the facilities required to hold the emergency Jirgah and would invite the members. The Jirgah should establish an interim political structure for the transition period, maintain stability, draft a new constitution and prepare the ground for free elections aimed at establishing a political system based on Islamic principles;

(c) Professor Mujadiddi, President of the so-called Afghan Interim Government (AIG), stated at a press conference on 27 November 1990 that the AIG's Election Commission had recently published an election law;

(d) The President of the Republic of Afghanistan, Dr. Najibbulah, visited Geneva at the end of November 1990. In a press conference prior to his visit, he stated that a committee acceptable to all sides should be established to hold elections under the supervision of the United Nations. The committee may enjoy control over the Ministries of National Defence and the Interior. An AIG spokesman commented that, "Our Jihad will continue because not a single Mujahed is ready to talk with Najib".

80. As far as elections are concerned, they should conform to the requirements set out in article 21 of the Universal Declaration on Human Rights of 10 December 1948 and article 25 of the International Covenant on Civil and Political Rights. Article 21 of the Universal Declaration of Human Rights stipulates that, "The will of the people shall be the basis of the authority of government and that this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures". Article 25 of the International Covenant on Civil and Political Rights stipulates that "Every citizen shall have the right and the opportunity to vote and to be elected at genuine elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors".

81. Article 66 of the Constitution of the Republic of Afghanistan provides for "universal, equal, free, secret and direct ballot elections" for the Loya Jirgah, while article 79 calls for the peoples' deputies to the House of Representatives to be elected by general, equal, free, secret and direct voting. Such elections have not taken place so far, owing to the prevailing situation. The constitutional provisions presuppose that the elections foreseen therein correspond to the modalities described in international human rights instruments.

82. A different selection scheme has been proposed by the Election Commission of the Supreme Court of the so-called Afghan Interim Government (AIG), in the form of a printed document. This election law contains 44 articles and is entitled "Law for the Formation of an Islamic Elective Competent Loya Jirgah of Afghanistan". The Special Rapporteur was unable to obtain a clear picture of the modalities for elections according to this law. It does not provide for general elections but calls for a selection of persons who would form an Islamically chosen Loya Jirgah of Afghanistan, which would be composed of 10 elected persons from each constituency at the district level, 15 selected persons from each component of the AIG in accordance with the AIG resolution of 8 January 1989, and 20 persons possessing a satisfactory Islamic identity and personality selected from throughout Afghanistan from among religious scholars, clergy and tribal elders. The Loya Jirgah's Central Commission would be composed of one person from each district, chosen from among the 10 persons elected at the district level.

83. There would also be an Islamic Council of the Wulasi Jirgah (National Assembly), which would be composed of one individual selected from among 10 representatives of each constituency, 10 groups appointed in accordance with an AIG resolution of 8 January 1989, and members of the Loya Jirgah's Central Commission.

84. The "law" also contains qualification rules for both candidates and voters. In order to become a candidate, one must be a Muslim and national of Afghanistan, have participated in the Afghan Jihad, be over 25 years of age, not have been sentenced by Islamic courts for any crime or misdeed in the course of the Jihad, possess proper religious knowledge, not be notorious for treachery or debauchery, not be affiliated to deviant political groups, and not have taken a stand against the Islamic Jihad.

85. Persons having a close male relative (father, son or brother) in the employment of the "atheist government" or occupying a high-level post in agencies related to the Khad (internal security police) are not eligible for election. This also applies to persons who left the "atheist government" after the withdrawal of Soviet troops from Afghanistan.

86. In order to vote, one should be a Muslim and citizen of Afghanistan, be sane and adult, not be affiliated to deviant political groups, and not have taken a stand against the Islamic Jihad. Women would be excluded from the electoral process. Although article 22 of the "election law" stipulates that, in the case of commanders in exile, they may be elected from a refugee quota, it would appear that approximately 70 per cent of Afghans would not be eligible to participate in these elections.

87. The AIG announced that the process of elections would be completed by 18 March 1991. Some 138 members of supervisory teams have been dispatched from Peshawar to 20 provinces inside Afghanistan. Similar teams would be leaving Quetta for 10 additional provinces. The Hezb-e-Islami opposition group, headed by Gulbuddin Hekmatyar, which is not part of the AIG, has also agreed to the AIG election plan.

88. The two election schemes, that envisaged in the Afghan Constitution and that contained in the AIG election plan, are fundamentally different. The scheme enshrined in the Constitution does not foresee the election of a "pouvoir constituant", but takes the existing Government as the point of departure. The scheme outlined in the AIG plan aims at the selection of a constituent body on the basis of which an assembly would be elected.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

89. The Special Rapporteur would like to point to the validity of most of the conclusions contained in his report to the General Assembly in November 1990:

(a) The human rights situation concerning social, economic and cultural rights has not changed markedly;

(b) Regrettably, the situation of refugees has also not changed significantly. However, a certain trend to return does exist, or at least, a trend towards a greater mobility of refugees can be observed. The extension until March 1991 of the pilot project for repatriation should further motivate refugees to return once the winter period is over;

(c) It appears that the political leadership of the opposition forces does not favour mass repatriation, and it would appear that the passage of refugees across the Pakistan-Afghanistan border is easier in Baluchistan than in the North West Frontier Province;

(d) The intensity of the armed conflict in Afghanistan has a bearing on the movement of refugees. New arrivals have been registered following the continuous fighting in Logar province;

(e) The right to life and security of refugees is not guaranteed at all. The closing down of the widows' camp in Nasir Bagh is a deplorable example of the unrest among refugees. In addition, bombing raids and rocket attacks, which endanger the life and security of refugees, have also been reported;

(f) The Special Rapporteur would like to reiterate that the situation of Afghan refugees, who still number approximately 5 million, constitutes a human rights problem in itself. The plight of refugees can only be solved through a political solution to the conflict, and the situation can only be improved through the humanitarian efforts of the Pakistani Government in conjunction with the United Nations and non-governmental organizations. It would appear that both the political parties of the opposition forces and the commanders are hostile to the return of refugees as long as the conflict continues;

(g) The military situation in the country remains stable, inasmuch as armed opposition groups continue to attack territory controlled by the Government, while Government forces endeavour to maintain control over the principal cities, provincial capitals, highways, airports and strategic positions, as well as to recover lost territory. The warfare, which has subsided to a certain extent during the winter period, continues to claim numerous victims from among the civilian population and causes much destruction. The attacks on Logar province provide a pertinent example;

(h) The human rights situation in Government-controlled areas should be viewed against the background of the armed conflict. The number of convicted political prisoners appears to be stable (about 3,000 persons). Several hundred others are under interrogation. The government figures provided to the Special Rapporteur are contradicted by information from opposition forces, who also claim that Afghan prisoners continue to be detained in the Union of Soviet Socialist Republics. The Special Rapporteur has received no proof of this allegation. It has also been asserted that there are still several thousand Afghan orphans in the Soviet Union. The Special Rapporteur has been unable to study these questions in depth;

(i) Prison conditions during the harsh winter period are very difficult. Conditions in the Rehabilitation Centre for Juveniles are not encouraging. The recent placing of its administration under the responsibility of the Ministry of Justice and in the hands of persons with sound juridical qualifications ought to be welcomed. However, the condition of classrooms, dormitories, kitchen and dining room are such that the adolescents detained there would not have the impression that the modern Afghan society is really interested in improving the future of young offenders. The Standard Minimum Rules for the Treatment of Prisoners and the Convention on the Rights of the Child should be strictly adhered to and incorporated into the internal regulations of the Centre.

(j) The Special Rapporteur would like to emphasize the importance of observing regulations against drug abuse in all detention centres;

(k) The Special Rapporteur wishes to repeat the usefulness of visits to prisons by the International Committee of the Red Cross (ICRC) and is of the opinion that these visits have had a positive bearing on conditions prevailing in prisons. Up to now, the ICRC has only been able to visit convicted prisoners. The Afghan Minister for State Security had promised in August 1990 and reiterated in January 1991 that the ICRC will also be allowed to visit prisoners in detention on remand. This promise has not been implemented so far;

(l) An equally unresolved matter which constitutes an important humanitarian problem is the fate of prisoners held by the opposition forces. As the Special Rapporteur has already stated, places of detention for such prisoners do exist. Afghan soldiers have on occasion been exchanged for political prisoners held by the Government. The proposal recently tabled by the opposition, whereby one Afghan soldier would be exchanged for 100 Mujaheddin gives the Special Rapporteur the impression of a hostage situation regarding prisoners which is strictly forbidden by humanitarian law. The fate of Soviet prisoners in the hands of opposition forces remains unclear. Lists of names of such prisoners held by opposition forces have been drawn up by the Soviet authorities, but so far no progress has been made on this question;

(m) Terrorist warfare continues. Rockets hitting civilian sites and killing civilians are commonplace, at least in Kabul;

(n) The Special Rapporteur has been informed of three incidents of massive summary execution carried out during the latter part of 1990 by the opposition forces in the Noor valley and in Tarin Kot and Qalat, Uruzgan province. Hundreds of persons have been killed. There is no justification for such behaviour.

(o) It appears that there is a certain movement towards a political solution of the conflict but it has not been co-ordinated so far. The United Nations have undertaken conciliation missions. The President of the Afghan Republic visited Geneva where he met prominent personalities and explained his policy of national reconciliation. The opposition parties based in Peshawar agreed upon a selection procedure with a view to the holding of selections inside Afghanistan and the most important commanders have also assembled in order to decide about the establishment of administrative centres in the areas they control. Although the approaches to the "election schemes" proposed by different sides are at odds with each other, it appears that there is a certain movement towards selecting genuine legitimate representatives from among various segments of the Afghan population. However, as long as the refugees are excluded from the election process, a fully representative body cannot be created. The Special Rapporteur is well aware that an "election scheme" must take into account the specificities of a given society;

(p) The Special Rapporteur expresses the hope that in spite of the overwhelming political problems currently preoccupying the United Nations owing to different crises, the Afghan conflict and the Afghan people, who need international solidarity, will not be forgotten.

B. Recommendations

90. The Special Rapporteur makes the following recommendations:

(a) The Commission on Human Rights should support the free return of nearly 5 million refugees to Afghanistan, whenever they wish. It should be made clear that refugees should not be taken as elements of political bargaining;

(b) The conflict should be halted and the use of weapons of mass destruction by both sides should be banned. Efforts to achieve a general cease-fire should be increased;

(c) Acts of terrorism against the civilian population within the meaning of the First Additional Protocol to the Geneva Conventions must be stopped, regardless of a general cease-fire;

(d) Particular urgency should be given by both the Afghan Government, other Governments concerned, and opposition forces, to the need for expediting the exchange of prisoners wherever they may be held. The International Committee of the Red Cross (ICRC), as a neutral and impartial intermediary, could play a role in this regard;

(e) The International Committee of the Red Cross (ICRC) should be allowed to visit all prisoners including those in detention on remand as well as prisoners held by opposition groups;

(f) The fate of Afghan orphans should be investigated once again;

(g) Financial contributions should be earmarked for creating better accommodation for juvenile detainees;

(h) The Commission on Human Rights should be vigilant concerning the situation of human rights in Afghanistan as long as no political solution to the conflict has been found;

(i) The Special Rapporteur would like to reiterate the recommendations presented in his report to the General Assembly which may be considered as a supplement to the present recommendations.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation of human rights in southern Lebanon

Note by the Secretary-General

1. The present note is submitted in accordance with paragraph 5 of resolution 1990/54 of 6 March 1990 of the Commission on Human Rights on the situation of human rights in southern Lebanon.

2. As indicated in General Assembly document A/45/578, the Secretary-General, in accordance with the request contained in paragraph 5 of the above-mentioned resolution, addressed on 14 June 1990 a note verbale to the Minister for Foreign Affairs of the State of Israel, in which he drew the attention of the Minister for Foreign Affairs to paragraph 5 of the resolution.

3. No reply had been received at the time of the preparation of the present note.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the human rights situation in Haiti prepared by Mr. Philippe Texier, Independent Expert, in accordance with Commission on Human Rights resolution 1990/56

CONTENTS

		Paragraphs	Page
INTRODUCTION		1 - 2	2
I.	GENERAL DEVELOPMENTS IN HAITI DURING 1990	3 - 110	3
II.	PRESENT LEGAL FRAMEWORK OF THE HUMAN RIGHTS SITUATION IN HAITI	111 - 121	20
	A. State institutions	111 - 118	20
	B. International commitments	119 - 121	21
III.	PRESENT HUMAN RIGHTS SITUATION IN HAITI	122 - 154	22
	A. Principal violations of human rights	123 - 142	22
	B. Responsibility for violations, and government investigations, during 1990	143 - 154	25
IV.	MISSION TO HAITI AND SUBSEQUENT ACTIVITIES	155 - 178	27
V.	PROVISIONAL CONCLUSIONS	179	30
VI.	PROVISIONAL RECOMMENDATIONS	180 - 181	31

INTRODUCTION

1. At its forty-sixth session, the Commission on Human Rights considered the report of the Expert (E/CN.4/1990/44) and the addendum thereto (E/CN.4/1990/44/Add.1) and adopted without a vote resolution 1990/56, entitled "Situation of human rights in Haiti". The relevant paragraphs of this resolution are reproduced below:

"...

Alarmed by the proliferation of acts of violence in Haiti, particularly against arrested or detained persons, and by the apparent inability of the Haitian judicial system to put an end to such acts,

Observing that the human rights situation in Haiti remains disturbing and even seems to have deteriorated since July 1989, particularly in rural areas,

Noting that the state of siege introduced on 20 January 1990 was lifted on 30 January and that a general amnesty for prisoners detained for attacks on the security of the State was announced on 7 February, but that many persons remain imprisoned or exiled and that, particularly because of the threats to their security, Haitians are not able to express their opinions freely and to participate under satisfactory conditions in the preparation of elections,

Taking account of the report of the Expert appointed by the Secretary-General, Mr. Philippe Texier, (E/CN.4/1990/44 and Add.1),

1. Expresses its appreciation to the Expert for his report and for the way in which he has discharged his mandate;

2. Welcomes the co-operation extended by the Haitian authorities to the Expert during his visit to Haiti from 25 July to 3 August 1989;

3 Notes, however, that the Haitian authorities have not acted upon the assistance proposals which the Expert submitted to them under the advisory services programme;

4. Expresses the hope that the Haitian authorities will ensure that elections are held as scheduled and in appropriate conditions of honesty and security, under the supervision of impartial observers;

5. Requests the Haitian authorities to proceed forthwith to take the necessary measures to enable exiled opponents to return and to ensure their security, so that they can participate in preparing the elections;

6. Invites the Government of Haiti to bring back into force the full Constitution of 29 March 1987, which was adopted in a referendum by an overwhelming majority;

7. Also invites the Government of Haiti to expedite the investigation into the principal massacres, particularly those of 29 November 1987 and 11 September 1988, and to bring those responsible to trial;

8. Further invites the Government of Haiti to ratify the International Covenants and international conventions on human rights, in accordance with its undertaking of December 1988;

9. Requests the Chairman of the Commission on Human Rights to appoint an independent Expert to examine developments in the human rights situation in Haiti and to help to devise measures capable of making the necessary improvements;

10. Calls upon the Haitian authorities to co-operate fully with the independent Expert;

11. Requests the Secretary-General to provide the independent Expert with all necessary assistance in performing his task;

12. Requests the independent Expert to report to the Commission at its forty-seventh session on developments in the human rights situation in Haiti;

13. Decides to consider the report of the independent Expert at its forty-seventh session under the agenda item 'Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories'."

2. This is the background to the present report; the Expert was guided by the recommendations contained in the above resolution in making his visit to Haiti from 27 June to 5 July 1990 and in establishing relations with the Government of Haiti and non-governmental organizations.

I. GENERAL DEVELOPMENTS IN HAITI DURING 1990

3. The early part of 1990 was marked by a series of events sufficiently serious to justify the preparation of an addendum to the Expert's report. On 20 January 1991, General Avril issued two decrees suspending several articles of the 1987 Constitution, introducing a 30-day state of siege and requiring Haitians who wished to leave or enter the country to obtain a visa.

4. There was also a series of extremely brutal arrests, and total censorship of the press was imposed; only television was allowed to broadcast news.

5. The democratic sector as a whole, opposition parties and a number of human rights bodies were affected by a wave of mostly unlawful arrests, whose sole objective seemed to be to terrorize the country's democratic forces.

6. The following persons were arrested: Serge Gilles, Georges Verleigh, Philippe Stephenson and Yves Duval, leaders of the Haitian Progressive Revolutionary Nationalist Party (PANPRA), a member of the Socialist International, together with a pastor, Jackson Noel, all of whom were at Serge Gilles' home. The particularly deplorable circumstances of these arrests were described in paragraphs 5-14 of the report of 31 January 1990 (E/CN.4/1990/44/Add.1) and do not therefore need to be repeated. Suffice it to recall that the arrests were particularly violent and were effected without any regard for the age or state of health of the persons concerned. For

instance, one of the individuals arrested was Dr. Louis Roy, aged 74 at the time and considered as the father of the 1987 Constitution, who was expelled to the United States.

7. The pretext for these exceptional measures, which compelled most political leaders, even the most moderate, to leave their homes and go into hiding, was the assassination, at dawn on 20 January 1990, of Lieutenant-Colonel André Neptune, a Presidential Guard officer responsible for distributing bonuses to soldiers, who was killed together with his wife and a domestic employee in circumstances that remain unclear.

8. As he had already done on several previous occasions, General Avril used the pretext of an attempted coup d'état within the Presidential Guard, which allegedly took place on Friday, 19 January, when he decided to dismiss Sergeant Heubreux, spokesman of the rank and file who had brought him to power in September 1988 and subsequently saved him at the time of the coup d'état of April 1989. The sergeant had been promoted to the rank of lieutenant, and transferred away from the inner circle of power.

9. The violence sparked off unanimous protests, including in particular a joint communiqué by the ambassadors of the member countries of the European Economic Community represented in Haiti and statements by a United States State Department spokesman and by Canada (see document E/CN.4/1990/44/Add.1, paras. 17 and 18).

10. There were also protests within Haiti: the Chamber of Commerce and Industry, the Association of Industrialists and the Haitian Church spoke out against the wave of arbitrary arrests, illegal imprisonment, exile of political leaders and ill-treatment.

11. On Friday, 26 January 1990, General Avril announced that the state of siege would be lifted on the following Tuesday, i.e. on 30 January, declaring on television that it would be possible to end "the necessary evil that the short-lived state of emergency represents" in view of "the positive results already achieved by efforts to curb the terrorist onslaught". Nothing was said about the return of exiles, the release of prisoners or the restoration of freedom of the press, the only genuine achievement since February 1986. On the other hand, the tone of the General's speech was disturbing, political opponents being described as "enemies of the people" or "anarchists challenging the authority of the State", and the desired objective of intimidation and fear was achieved.

12. It was in these difficult circumstances that the Expert prepared an addendum to the report and submitted it to the Commission at its forty-sixth session. In view of the increasingly hard and intransigent line taken by General Avril in the preceding weeks and his increasingly reticent statements about the organization of elections, changes seemed more and more likely, as the Expert indicated during his oral presentation of the report to the Commission.

13. Rumours were beginning to circulate about the probable departure of General Avril, although it was not possible to establish whether they were well-founded. However, the process accelerated in the space of a few days and General Prosper Avril finally left the Palais National on 10 March 1990. Two days later, at dawn on 12 March, he left Haiti on board a United States military aircraft.

14. The Consultative Assembly, which was originally composed of 11 political parties in the democratic sector and the "Honour-Respect for the Constitution" group proposed the establishment of new transitional institutions: a member of the Court of Cassation would act as President, backed up by a Council of State which would play the kind of role normally performed by Parliament by exercising supervision and putting forward proposals.

15. It should be noted that the 1987 Constitution provides that, in the event of a vacancy in the office of President of the Republic, the President of the Court of Cassation shall serve as interim President of the Republic; there is no provision for a Council of State. This was thus a popular creation, with the Council's membership to comprise 11 representatives of organizations in civilian society and eight representatives of the provinces.

16. Mrs. Ertha Pascal Trouillot, Court of Cassation judge, accepted the post of President of the Provisional Government, on the proposal of the "Group of 12". She was the first woman to serve as Head of State in Haiti's history, having previously been the first female attorney in Port-au-Prince, the first female judge and the first female member of the Court of Cassation.

17. On 13 March 1990, Mrs. Trouillot was installed in office at the Palais National. She pledged, "with the loyal and irreproachable support of the army", to set up "as soon as possible, to run the affairs of the country, a permanent Government chosen by the people in complete freedom". She also affirmed the supporting role to be played by the Council of State, both in following current Government business and in ensuring a response to the people's aspirations.

18. On 18 March 1990, Mrs. Trouillot announced the composition of her Government: National Defence: Colonel (Retd.) Jean Thomas; Interior: Me. Joseph Maxi; Justice: Me. Pierre Labissière; Economy and Finance: Mr. Leslie Gauthier; National Education, Youth and Sport: Charles Tardieu; Information and Co-ordination: Carlo Besinor; Public Health and Population: Serge Fils-Aimé; Agriculture, Natural Resources and Development: Lionel Richard; Social Affairs: Claudette Werleigh; Public Works: Jean Pierre Moïse Pierre Louis; Civil Service: Ludovic Pierre; Trade and Industry: Maurice Lafortune; Foreign Affairs and Religion: Kesler Clermont.

19. It should be noted that, for the first time since February 1986, the Ministry of National Defence and the Ministry of the Interior were separated and placed under two different Ministers. Moreover, several Ministers are known for their role in the democratic opposition or have distinguished themselves as defenders of human rights. For instance, Mr. P. Labissière, Minister of Justice, was formerly President of the Port-au-Prince Bar Association, and Mr. J. Maxi formerly President of the Haitian League for Human Rights. These few changes have considerable symbolic significance.

20. At the same time, a number of senior officials in the public administration were ousted by the staff themselves in what were often questionable circumstances, in particular at the Overseas Haitians Department, the National Civil Aviation Office, the State Stores Office, the Haitian Lottery, the Haitian Cement Company, the telecommunications authority, etc.

21. It is helpful to give a brief description of the Council of State, a new institution whose relations with the President of the Provisional Government experienced periodic difficulties throughout 1990. At its sitting of 4 March 1990, the Consultative Assembly defined the powers of the Council of State as follows:

> "The basic role of the Council of State is to oversee the actions of the executive, whose main task is to deal with current business and to arrange for free and democratic elections to be held as soon as possible.
>
> "Accordingly, the Council of State shall give its opinion on the following activities of the executive: the formation of the ministerial cabinet, the promulgation of any decree or order, the signature of any treaty, agreement or convention relating to urgent, short-term projects not involving the future of the nation, and the general running of the country in the political, economic and social spheres.
>
> "In the event of a serious disagreement with the executive and once all conciliation procedures have been exhausted, the Council of State shall advise the Haitian people, through the press, of the nature of the dispute and may exercise its right of veto. A two-thirds majority of the Council membership shall be required for a vote of no confidence in the executive.
>
> "... The members of the Council of State shall be sworn in by the Court of Cassation and shall immediately take up office. Under no circumstances may the executive dissolve the Council of State ... The mandate of the Provisional Government shall come to an end when the constitutionally elected President is installed."

22. The membership of the Council of State is supplemented by eight representatives of the provinces.

23. Clearly, the Consultative Assembly wished to grant this new institution extensive powers for supervising the executive, which occasionally endeavoured to break free from them; this led to functional difficulties and even serious threats of a split on several occasions.

24. On 16 March 1990, 11 members of the Council of State were appointed by presidential decree, as follows: representative of the human rights sector: Dr. Louis Roy; trade-union sector: Ernst Mallebranche; peasant sector: Marc Lamour; private sector: Serge Vilard; educational sector: Lesly Voltaire; socio-professional sector: Michel Lominy; journalists' association: Vénel Remarais; the Bar: Me. Kernizan; women's sector: Suzy Castor; reformed churches: Chavannes Jeune; working-class sector: Gérard Blot.

25. Two other sectors were called upon to participate by the Consultative Assembly: the Episcopal Conference and the army. The Episcopal Conference preferred to stay out, so as to be able to play a possible mediating role, while the high command of the army replied that "reasons related to army regulations and hierarchical problems prevent it from sending a representative".

26. From the outset, the military authorities at the highest level announced that they would submit to the new provisional civilian Government. Right after the investiture of the President, General Hérard Abraham, Chief of Staff, made a speech that attracted considerable attention, stating:

> "Almost 72 hours ago, the Haitian armed forces had the specific mission of preserving national sovereignty in order to create suitable conditions for the installation of a provisional civilian President ... The unstinting co-operation received from all interested sectors and your acceptance of your nomination have enabled the Haitian armed forces to achieve this objective on schedule, and with honour ...
>
> The army is returning to ... sorry, has stayed in its barracks. It will remain at the service of the authorities to perform its primary task of guaranteeing the life and property of all citizens. It sincerely thanks the officers, non-commissioned officers and soldiers, civilian society, the churches, and the political parties for their spirit of co-operation and dialogue, which have helped the country to surmount this serious crisis without national institutions being endangered ...
>
> 'The Consultative Assembly' and the 'Honour-Respect for the Constitution' group, with the agreement of many socio-professional and religious associations, called upon the high command of the Haitian armed forces to take steps to install a provisional civilian President at the head of the State. I therefore have the honour, as Commander-in-Chief of the Haitian armed forces, to invest citizen Ertha Pascal Trouillot as provisional President of the Republic of Haiti. The mission entrusted to the Haitian armed forces is thus at an end while yours, Madam President, is beginning ...
>
> Madam President of the Republic, the Haitian armed forces are at your command."

27. The Chief of Staff thus declared his loyalty to the provisional civilian Government. As at 8 December 1990, he had kept his word.

28. Between 12 and 22 March 1990, the leading figures exiled on 20 January 1990 returned to Haiti: Aloy Brun of KONAKOM (National Committee of the Congress of Democratic Movements; Hubert de Ronceray, President of MDN (Mobilization for National Development); Dr. Louis Roy, father of the Constitution, who testified to the Commission on Human Rights at its forty-sixth session and who was to become President of the Council of State, and Turneb Delpé of FNDPM (Haitian National Democratic Party), whose cases were referred to in our 1990 report.

29. The Church, in the person of Mgr. Willy Romelus, Bishop of Jérémie, expressed support for the new President. All trade union federations also lent their support to the process of change.

30. By three decrees issued on 12 April 1990, Me. Pierre Labissière, Minister of Justice, dissolved the Permanent Electoral Council (which had been set up by General Namphy on 23 February 1988). He ordered the General Taxation Department to take the necessary measures to safeguard the property in the Council's possession and reintroduced the Decree of 13 May 1987 (abrogated by General Namphy) setting up the original Provisional Electoral Council, which had enjoyed the confidence of Haitian citizens.

31. This Provisional Electoral Council is composed of nine members, designated as follows: (1) one by the executive (government officials excluded); (2) one by the Episcopal Conference; (3) one by the trade-union organizations; (4) one by the Court of Cassation; (5) one by human rights bodies not participating in the elections; (6) one by the university senate; (7) one by the Journalists' Association; (8) one by the reformed churches; (9) one by the National Board of Co-operatives. This composition is fully in accordance with the 1987 Constitution.

32. On 5 April 1990, Mrs. Trouillot sent an official letter to the Secretary-General of the United Nations requesting the Organization's assistance in arranging the forthcoming general elections.

33. At the same time, various difficulties arose in certain government departments or town councils because of the failure to accept nominations for new officials. Claude Baboun, mayor of Port-au-Prince, resigned on 15 April 1990.

34. A presidential order of 20 March 1990, published on 11 April, appointed Lieutenant-General Abraham as Commander-in-Chief of the Haitian armed forces, but there was difficulty in enforcing discipline, as two examples serve to demonstrate. On 2 April 1990, a soldier seized control of an American Airlines plane at Port-au-Prince airport in protest against a disciplinary measure imposed by his superiors. After four days of negotiations, he managed to escape by crossing the runway during the night. Also on 2 April, soldiers from the Hinché garrison in the central plateau refused to accept the appointment of Colonel Henri Robert Augustin as commander of the department. Soldiers at Gonaives (Artibonite) had a similar reaction to the announcement of the appointment of Colonel Ulysse François as commander. In both cases, a military delegation was able to persuade the garrisons to accept these officers, but the examples are significant.

35. The first signs of tension between the executive and the Council of State appeared on 2 April 1990 in connection with the Council's powers. The President was reminded of the 11 March 1990 agreement by the Consultative Assembly in a letter of 30 March stressing the role of the Council of State which, the Assembly stated, was to: supervise general Government policy; formulate Haiti's domestic and foreign policy in conjunction with the executive; pronounce on any decree before its promulgation; and assist the executive with any measure to be taken during the transitional period.

36. This letter criticized the Government for failing to keep a number of its commitments and, in particular, for not giving the Council of State the material resources it needed to operate and for not making the judicial and police reforms that would enable the authorities to act against notorious criminals.

37. The difficulties continued throughout April: on 14 April 1990, for instance, a Council of State delegation on mission in Bas-Artibonite was refused passage by a corporal who stated that "there will be no meeting at Labadie without an order from the army". Some people seem to challenge the very existence of the Council of State.

38. However, the process of establishing the new institutions continued, and a presidential order of 27 April 1990 designated the members of the new Provisional Electoral Council (CEP), as follows: Pierre Gonzales, Jean-François Merisier, Philippe Jules, Emmanuel Ambroise, Me. Jean-Philippe Rosemond, Arold Julien, Mrs. Yva Youance, Jean Casimir and Ernst Mirville. Three of these persons - Philippe Jules, Emmanuel Ambroise and Ernst Mirville - had already been members of the 1987 CEP.

39. The President continued to express a desire for elections to be held as soon as possible. On 9 May 1990, she said that she wanted elections to take place "by no later than September", while specifying that it was for the CEP, as the body responsible for organizing the elections, to set the date.

40. Restructuring continued in local and national government. Mrs. Irène Ridore became the new mayor of Port-au-Prince and, it may be noted, had to seek help from the population to cope with the threats and attacks to which she was subjected. She personally told the Expert that, on 3 May 1990, she had been threatened in her office by a gunman wearing a red armband. After being questioned by the police at the mayor's request, he was released; he returned to the town hall a few minutes later.

41. In early May, the Port-au-Prince town hall, the Haitian national television service and the Haitian flour-milling company had to close for restructuring.

42. On 2 May 1990, eight of the nine members of the CEP were sworn in by the President of the Court of Cassation at the Palais de Justice in Port-au-Prince. Dr. Ernst Mirville, representative of the press, was absent. One week later, the executive replaced him by Jean-Robert Sabalat, former head of the 1987 CEP Electoral Departmental Bureau, who became Chairman of the CEP later in 1990.

43. A number of political parties or political alliances in the democratic sector became impatient, calling for prompt publication of the electoral timetable and, in the case of many of them, for all elections to be held on the same day.

44. Shortly after the new CEP was sworn in, there were signs of a resurgence of insecurity. Many peasants rallied behind the themes of high cost of living, justice and security. They called for the replacement of certain section heads and judicial officials.

45. Tension between the executive and the Council of State flared up when Mrs. Trouillot, by order of 21 May 1990, appointed Mrs. Marie Violène Legagneur as Minister of the Economy and Finance as a replacement for Mr. Leslie Goutier without first consulting the Council of State.

46. On 15 May, the CEP met to hold internal elections. Mr. Jean-Robert Sabalat was chosen as Chairman, Mrs. Yva Youance as Vice-Chairman, Mr. Jean Casimir as Secretary-General and Mr. Arold Julien as Treasurer.

47. On 11 May, following a meeting between the executive, the Council of State and the Consultative Assembly, the President, the Ministers and the Council of State declared their willingness to inform public opinion periodically "of administrative difficulties and the solutions introduced, in a spirit of the greatest openness".

48. On 7 June 1990, the CEP held its first press conference, at which the Chairman, Jean-Robert Sabalat, stated that "the elections will be held at the end of September 1990, in a single day. That is technically possible." He added that the CEP would abide by article 291 of the 1987 Constitution, according to which:

> "The following may not seek any public office for 10 years following the publication of this Constitution ...
>
> (a) Any person generally known to have been, through his excess of zeal, one of the artisans of the dictatorship and its maintenance over the past 29 years;
>
> (b) Anyone responsible for public funds during the years of the dictatorship regarding whom there is a presumption of illicit enrichment;
>
> (c) Any person denounced by public outcry as having tortured political prisoners at the time of arrests and inquiries or of having committed political assassinations."

49. The Secretary-General of the CEP, Jean Casimir, said that international observers had been invited from the United Nations or the OAS to verify the results of the elections, as had been done in Nicaragua in early 1990.

50. On 4 June 1990, the Council of State published a report entitled "The Council of State and the Nation", which was fairly critical of its relations with the executive and the executive's lack of determination. It says among other things that "the Provisional Government should tackle with determination the four main types of problems to which the inhabitants of the Republic's nine departments are demanding a solution and on which the Council of State has taken a very clear position from the beginning: insecurity and justice, cleaning up the public administration, lowering the cost of living and relations with the executive". It would seem that the appointment of Mrs. Lagagneur as Minister of Finance without the Council of State's agreement prompted its decision to publish this negative report.

51. The "Group of 12" called for the resignation of Mrs. Lagagneur, who had been a founder member of Jean-Claude Duvalier's National Progressive Party. The "Honour-Respect for the Constitution" group and a number of trade unions and employers' organizations associated themselves with this demand. Other political leaders supported the Minister and accused the Consultative Assembly of having given the Council of State too much power. The political situation was getting rather tense, as people declared themselves candidates for the Presidency of the Republic, particularly when they were likely to be covered by article 291 of the Constitution. Thus, for example, on 6 June 1990, Claude Raymond, a former general of the armed forces under Francois Duvalier and a former candidate for President rejected by the 1987 CEP, announced his candidacy over the Haitian National Radio. When asked about the events of November 1987, he denied that his supporters had been involved in the massacre in any way.

52. On 7 June 1990, the General Assembly of the OAS, meeting in Paraguay, adopted the report of the Inter-American Commission on Human Rights, which denounced the climate of violence in Haiti, and in particular the existence of an institutionalized practice of violence by members of institutions whose

function was precisely to keep the peace and safeguard citizens' human rights, especially the right to life and personal safety. Those institutions were, in the Commission's opinion, the army, the police, the section heads and the paramilitary groups supporting them.

53. On 31 May 1990, there was another massacre of 11 peasants at Pérodin (Artibonite) (see below), where various section heads were engaging in abuses.

54. On 21 June, Serge Villard, representative of the private sector in the Council of State, and Jean Robert Montès, a trade unionist belonging to the Autonomous Confederation of Haitian Workers (CATH), were killed in an attack. This was a very serious incident, threatening the already fragile stability of institutions, which some people interpreted as the conservative forces' response to the positions taken by the Council of State, to the electoral law due to be published in the next few days, or to the presence in Haiti of a United Nations mission to study the possibility of assistance in the organization of the elections.

55. This mission, which the Expert met in New York on its return from Port-au-Prince, visited Haiti from 19 to 24 June. It had long meetings with the executive, the Council of State, the Electoral Council and the army to examine what kind of aid could be given in the areas of logistics, organization, observation and security.

56. Mrs. Trouillot, President of the Provisional Government, was to have gone to New York for a working meeting with the Secretary-General of the United Nations, together with a representative of the army, the Chairman of the Provisional Electoral Council and the Chairman of the Council of State. In the end she cancelled the trip, which led to an immediate visit by the Special Representative of the Secretary-General, who spent a week in Haiti.

57. It was during this same period, on 16 June 1990 to be precise, that the Co-ordinating Committee for the Security of the Elections was set up.

58. Announced by the high command of the Haitian armed forces, this appointment of a committee of four senior army officers to put forward a plan for protecting prominent Haitians and foreigners during the electoral period was encouraging. On the same day, a liaison committee was established to maintain contact with the different army units. It was also around this time, on 11 June, that a three-month seminar was started at which some 30 district commanders were to be given training in civics by both civil and military instructors.

59. The Council of State took various public positions distancing itself from the executive: it condemned the "reprisals against the peasants in Pérodin in violation of the mandatory provisions of the Constitution" and invited "the authorities concerned to desist from any kind of pressure or brutality against the peasants of Pérodin and to take all necessary steps to comply with the laws of the country". It also contested the validity of the appointment of the Minister of Finance, in a note to the President, in which it refused to "associate itself with any act of the executive bearing the signature of Mrs. Violène Legagneur".

60. Criticism of that Minister was being heard from all sides. The "Honour-Respect for the Constitution" group stepped up its attacks on her, and

other trade unions and political groups called for her departure. The political parties were divided on the date of the elections, some wanting them to be in September and others later, and on the Council of State, whose role was contested by a number of parties.

61. At the same time as the United Nations mission led by Mr. João Augusto de Medicis, Personal Representative of the Secretary-General of the United Nations, a two-man OAS mission, consisting of Mr. Jorge Barbosa and Mr. Pierre F. Coté, was visiting Haiti.

62. While the conflict between the executive and the Council of State was continuing, and indeed worsening, the return to Haiti of two Duvalier supporters against whom judicial proceedings had been brought increased the tension somewhat. After much beating about the bush and an exchange of letters between the President and the Council of State, Mrs. Trouillot agreed to the publication in the Moniteur (the official gazette of the Republic of Haiti) of the protocol of agreement she had signed on 4 March 1990 with the Consultative Assembly. This was announced on 19 July in a note from the Provisional Electoral Council.

63. At the same time, Roger Lafontant, former chief of the Macoutes under Jean-Claude Duvalier, and William Régala, Minister of the Interior at the time of the 29 November 1987 massacre, entered the country despite instructions to the contrary from Joseph Maxi, Minister of the Interior, on 7 July 1990.

64. A warrant had been issued for the arrest of R. Lafontant; it was declared null and void because of a procedural irregularity by an interim relief judge in Port-au-Prince, Me. Justin Fougère. He, and another judge, Me. Luc Thimothée, were immediately retired by the Provisional Government. A second arrest warrant was issued on 16 July. The Government Commissioner was then appointed before the Senior Judge of the Civil Tribunal to decide on its validity. The hearing, held on 18 and 20 July, was contested by R. Lafontant's lawyers and adjourned to 24 July. This affair caused reactions in all sectors and deeply divided public opinion.

65. The army, in particular, was unable to arrest these people. On 9 July 1990, Captain Patrick Bastien, Chief of Security at the airport, asserted that he had "not received any instructions from his superiors to arrest Roger Lafontant". Active efforts were however made to trace him, and searches were carried out over the weekend of 15 July.

66. During a meeting on 12 July at which the Council of State analysed the crisis in its relations with the executive, it concluded, following consultations with the representatives of the parties in the Consultative Assembly, that: (1) The future of democracy was endangered by the presence in Haiti of William Régala and Roger Lafontant. It was for the executive "still in office" to take appropriate action; (2) The Council of State should remain in office until the inauguration of the democratically-elected Government; (3) Any solution to the crisis which would modify the alternative of 4 March 1990 as it then stood or would mean dissolving the Council of State was unacceptable; (4) A meeting was necessary between the Council of State, the army and the Consultative Assembly with a view to finding a solution to the crisis as quickly as possible.

67. The Provisional Electoral Council offered itself as a mediator between the executive and the Council of State and declared in a communiqué of 10 July 1990 that "the presence of Roger Lafontant and William Régala can only interfere with the electoral process". It asked the political parties which had called a strike to suspend it for the time being.

68. On 10 July 1990, the electoral law was published in the official gazette (without reference to the Council of State). It was very close to the preliminary draft put forward in June (see below).

69. The political parties were more and more divided between those which supported the President of the Provisional Government and those which denounced the executive as conniving at the return of leading Duvalier supporters. The strike called by the consultative parties (except for Marc Bazin's MIDH and the MNP 28) to have W. Régala and R. Lafontant arrested took place on 11 July and was an undoubted success. But the great majority of politicians denounced their presence, with the exception of those two persons themselves: W. Régala said that there was "a veritable campaign of denigration against a retired major-general with a clean record and a citizen with nothing on his conscience"; R. Lafontant, for his part, expressed his opposition to a warrant "issued arbitrarily by the judge" and invoked article 41 of the Constitution, under which "no person of Haitian nationality can be deported or forced to leave the national territory. Whatever the reason, no one may be deprived of his legal capacity or his nationality on political grounds."

70. Many grass-roots organizations, both in Port-au-Prince and in the provinces, also protested against their presence. Complaints were also lodged against Mr. Régala and Mr. Lafontant, in particular by Bernard Sansaricq and Sylvio Claude. Some sectors of the church (Father Aristide) associated themselves with the protest, as did the trade unions and the peasants.

71. It was in August that the President of the Provisional Government visited Latin America (Venezuela, Colombia) and made her official request to the United Nations for help with the elections. She asked for United Nations assistance with observation and verification of the electoral process and with the implementation of a security plan, in three letters dated 23 June, 9 August and 14 September 1990.

72. In those letters she asked in particular for:

> "Observation and verification of the elections covering the whole of the electoral process, and in particular the registration of electors on the electoral rolls, the registration of candidates, freedom of expression and campaigning for the political parties, respect for the equality of the candidates during the election campaign and independent verification of the results of the vote;
>
> Finalization of conditions enabling such international observation to produce an independent and valid judgement on the prospects for establishing democratic stability on the basis of the election results;
>
> Arrangements for the international presence to be visibly active, essential if electors' fears are to be dispelled and representative participation by the population ensured;

Assistance to the Co-ordinating Committee for the Security of the Elections of the Haitian armed forces from advisers with experience in the field of security in the preparation and implementation of electoral security plans;

Observation by specialized United Nations staff of the application of those security plans throughout the national territory;

Co-ordination of the offers of assistance by CARICOM and UNDP with a view to ensuring secure conditions in and around polling stations;

In this connection, the Haitian Government stresses the need to co-ordinate aid from multilateral sources in order to make it as effective as possible ..."

73. At its forty-fifth session, the General Assembly of the United Nations adopted resolution 45/2 dated 10 October 1990. In it the General Assembly reaffirmed the sovereign right of the people of Haiti to choose and participate freely in the determination of their own destiny without any external interference, and:

"1. Requests the Secretary-General, in co-operation with regional organizations and Member States, to provide the broadest possible support to the Government of Haiti in meeting, to the extent possible, the following requests:

(a) A nucleus of some 50 observers that would arrive in Haiti prior to voter registration and would leave only after the elections;

(b) Reinforcement of the nucleus at the time of elections and voter registration, bringing the total to a few hundred observers;

(c) Assistance to the Co-ordinating Committee for the Security of the Elections, to be provided by two or three advisers;

(d) Observation of the implementation of the electoral security plans by specialized staff, that is, by observers, the number of whom remains to be determined, with solid experience in the public order field;

"2. Urges the international community and relevant international organizations to increase their technical, economic and financial co-operation with Haiti, in order to support the economic and social development efforts of the country;

"3. Requests the Secretary-General to submit to the General Assembly a report on the implementation of the present resolution."

74. It was at the same time that the Council of State announced that it was in "open war" with the President. In an "address to the nation", dated 14 August 1990, it declared that "it wholly dissociates itself from the policy followed by the executive [and] exercises its right of veto with regard to the policy of the executive presided over by Mrs. Ertha Pascal Trouillot". This was the culmination of a crisis that had been brewing for several weeks.

75. On 6 August the Provisional Electoral Council announced that it was postponing the start of electoral registration until 3 September 1990 for various reasons, among which financial difficulties, security problems and tension between it and the army or the executive played their part. The CEP's offices were even attacked on 14 August 1990 by five armed men, said to have been identified as Lafontant's men.

76. Political parties of all tendencies were beginning to mobilize for the elections. All kinds of statements were being issued and positions taken up for or against the Council of State and for or against the executive and the President of the Provisional Government, whose resignation was still being demanded in some quarters. On 8 August, 200 Duvalier supporters paraded through the streets of Port-au-Prince to "protest against foreign interference and the visit to the capital of Dan Quayle, the Vice-President of the United States". They shouted slogans against the Council of State, the Provisional Electoral Council and the democratic sector.

77. On 24 August 1990, five Ministers resigned - Claudette Werleigh, Minister of Social Affairs, Charles Tardieu, Minister of National Education, Lionel Richard, Minister of Agriculture, Kesler Clermont, Minister for Foreign Affairs and Religion, and Maurice Lafortune, Minister of Industry and Trade - on the grounds that Mrs. Trouillot was not observing the protocol of agreement of 4 March 1990 on power-sharing between the executive and the Council of State.

78. On 27 August, the following were appointed to replace the Ministers who had resigned: Alfred Mentor, Information, Culture and Co-ordination, Alex Toussaint, Foreign Affairs and Religion, André Jean Louis, Agriculture, Natural Resources and Rural Development, Jean Mainvil, Trade and Industry, Chavannes Douyon, National Education, Youth and Sport, and Onil Millet, Economic Affairs.

79. When the new Cabinet took office, on 27 August, Mrs. Trouillot made a very firm speech saying that nothing would prevent her from seeing the process through to the end. (At that time the election date was set at 4 November.)

80. On 28 and 29 August, the army's Co-ordinating Committee for the Security of the Elections, consisting of senior army officers and the commanders of the nine military departments, took part in a round-table with the Provisional Electoral Council, "to envisage all measures necessary to guarantee full and complete security for voters during the general elections on 4 November". A week earlier, the civics seminar for the military had come to an end; it had tackled such varied themes as the history of the army, the electoral process, the Penal Code, human rights in the 1987 Constitution, the Universal Declaration of Human Rights, protection of the environment, military ethics, the Rural Code, public relations, etc.

81. The Council of State made an appeal to the CEP on 29 August, saying that:

> "... only a credible government can create a climate of confidence enabling the CEP to organize genuine elections by the scheduled date and allowing the people to turn out in force at the polls.

"The presence of Roger Lafontant and other torturers from the previous régime at large in the country, the equivocations of the executive, the army and the judiciary in relation to the measures of justice demanded by the population, the street demonstrations and actions by terrorist groups are new developmnets which have undermined the Government's legitimacy and call in question its will and capacity to provide the minimum security conditions for the holding of elections.

"The executive is operating in total breach of the principles governing the Provisional Government and without any legality or legitimacy."

82. The CEP then postponed the elections "for technical, material and financial reasons". It announced on 1 September that electoral registration, which was to have begun on 3 September, would be postponed to 5 October 1990. It welcomed, however, the meetings it had held with the Co-ordinating Committee for the Security of the Elections.

83. The Consultative Assembly declared itself more and more openly hostile to the President, asked the CEP to suspend operations temporarily and even called for the formation of a new provisional government. Public opinion (employers' associations, socio-professional associations, trade unions, peasants) became daily more divided for or against the power-sharing formula between the executive and the Council of State, supporting one or the other as the case might be.

84. Haitian political life was becoming increasingly polarized between organizations which supported the Electoral Council in its decision to postpone the elections and those which rejected that decision. Political parties, associations and trade unions alike were affected.

85. The Council of State declared that it was still hostile to any accommodation with the executive after the "violation by the executive of the protocol of agreement of 4 March", its vote of defiance and the appointment of a new cabinet without the Council's being consulted, but it announced on 9 September that it would not resign.

86. The Chairman of the CEP, in a statement at the beginning of September, explained that "the postponement of elections does not mean that electoral campaigning is suspended. The constitutional date of 7 February 1991 for the inauguration of the president elected will be adhered to", despite the considerable financial burden involved. He estimated the sum needed for electoral registration alone at $8 million.

87. It became clear by the end of September that Haiti's armed forces were ready to guarantee electoral security and that they would not let acts of violence or massacres occur as they had on 29 November 1987. One of the signs of their determination was the establishment by the President of a joint civil-military commission against insecurity. It had six members: Jean Thomas, Minister of Defence, Joseph Maxi, Minister of the Interior, Pierre C. Labissière, Minister of Justice, Hérald Abraham, Commander-in-Chief of the Armed Forces, Acedius Saint-Louis, brigadier, and Fritz Romulus, brigadier. Its tasks were:

"1. To determine the causes of the insecurity undermining public peace and to propose the strategy to be adopted in order to create the favourable climate necessary for the forthcoming elections;

2. To collect and compile all data on security so that the electoral process can follow its normal course until it is completed;

3. To intervene promptly, either directly or through the special security bodies, in the event of disturbances and conflicts likely to affect the political atmosphere and interfere with the electoral process under way."

88. On 25 September 1990, the Provisional Electoral Council published the time-table that was to be finally adopted for the elections:

Start of registration: 5 October 1990;

End of registration: 25 October 1990;

Deadline for decisions by the Electoral Council on contested registrations: 5 November 1990;

End of period for renewal of spoilt, lost or stolen cards: 30 November 1990;

End of period for challenging candidacies: 19 October 1990;

Deadline for delivery of receipt for deposit: 24 October 1990;

Date for issue of certificates of submission of candidacy in the absence of any challenge: 26 October 1990;

Deadline for CEP decisions on challenges to candidacies: 29 October 1990;

Deadline for validation of candidacies by the CEP: 6 November 1990;

Electoral campaign: 7 November-14 December 1990;

First round of voting: 16 December 1990.

89. According to the information we have, it was possible to stick to this very tight time-table.

90. Over the weeks, the CEP had meetings with the military authorities and departmental and communal electoral offices to discuss a plan for electoral security. The military authorities constantly repeat that they are ready to guarantee security at election time.

91. The appeals made to all sections of the population, particularly by the Catholic Church/Episcopal Conference, for citizens to register for the elections in large numbers gradually bore fruit, and by the time the lists were closed there were a very high number of registrations.

92. The Episcopal Commission Justice and Peace expressed the view, on 19 September 1990, that "the arrest of William Régala and Roger Lafontant, the recall of certain criminal officers in the rural police, and the transfer of some members of the military involved in massacres, including those of 29 November 1987, are the minimum conditions that must be met before registration begins". These arrests, however, despite many appeals from different social, political and human rights circles, were not to take place.

93. From the beginning of October 1990, United Nations and OAS observers were present in Haiti to observe and facilitate the electoral process. An agreement was reached on 4 October between the CEP and the OAS secretariat under which the CEP guaranteed the observers "the right to communicate freely with all parties, political groups and social organizations", ensuring them "free access to registration and polling stations on registration, election and vote-counting days, and to the CEP's computerized monitoring centre ... to voter registration lists, voting and vote-counting records, and to any other document relating to the conduct of the electoral process".

94. Nevertheless, there were a few incidents similar to those that occurred in 1987: on 7 October, in Gonaïves, two registration and polling stations were smeared with excrement, and graffiti denouncing article 291 of the Constitution appeared on the walls. The head of the BED (Departmental Electoral Bureau) of Gonaïves described this as an intimidation campaign.

95. At the close of registration, there were 26 candidates for the presidency and, as at 23 October 1990, approximately 2 million citizens had registered out of a potential electorate estimated at approximately 3.5 million citizens.

96. After numerous legal manoeuvres by the Provisional Government to bypass the opposition, former President Leslie Manigat was authorized to return to Haiti and did so on 20 October.

97. On 12 and 13 October, Roger Lafontant founded a political party of Duvalier supporters at a convention which condemned interference by the United Nations and the Organization of American States in Haiti's internal affairs. He officially announced his candidacy for the office of President of the Republic.

98. The representatives of the OAS, led by the Secretary-General of the Organization, Mr. João Baena Soares, and of the United Nations, led by the Personal Representative of the Secretary-General, João Augusto de Medicis, both present in Haiti, travelled all over the country to follow the conduct of the electoral process.

99. On 5 and 6 November 1990, the CEP ruled out 12 of the 26 candidates for the office of President of the Republic, although without referring to article 291 of the Constitution, which excludes the "zealous artisans" of the Duvalier dictatorship for 10 years. Among them were the two leaders with arrest warrants outstanding against them or liable to be prosecuted: Roger Lafontant and Claude Raymond. The first was excluded for not having a birth certificate and an administrative release, and the second because his party had been recognized after the date for filing candidacies had expired. Leslie Manigat was also eliminated for violation of article 134-3 of the Constitution, which provides that "the President of the Republic ... cannot

take on a new mandate until five years have elapsed". The CEP eliminated 29 candidates for the Senate and 114 for the Chamber of Deputies; there remained 338 candidates for the 83 posts of deputy and 125 for the 27 seats in the Senate.

100. The army was reinforced to ensure security during the elections, and the armed forces high command declared on 29 October that civilians, including ex-military personnel, would be prohibited from, and could be arrested for, possessing firearms.

101. On 6 November 1990, Roger Lafontant, after being eliminated by the CEP, declared that he would maintain his candidacy for the Presidency. He filed his birth certificate and a release from the Higher Accounts Court with the CEP and stated his intention to sue the CEP.

102. On 29 October, 30 new United Nations observers, security experts and telecommunications specialists arrived in Haiti to "work in close co-operation with the Military Committee for the Security of the Elections".

103. On 21 November, Wilner-Gérard Vital-Herne was appointed mayor of Port-au-Prince, replacing Irène Ridore, the wife of Evans Paul, one of the leaders of the National Front for Change and Democracy (FNDC, Father Jean-Bertrand Aristide's main support) and himself candidate for mayor. This dismissal by Mrs. Trouillot was rather puzzling, since Mrs. Ridore had begun a restructuring of the mayor's office in order to eliminate corruption. Occurring as it did a few days before the elections, it gave rise to much speculation.

104. On 19 November 1990, statistics published by the CEP indicated 3,271,155 registered voters, 11 candidates for the Presidency, 119 for the Senate and 338 for the Chamber of Deputies.

105. Following disturbances during the campaign, the CEP made a declaration on 16 November calling upon the candidates and political parties:

> "to refrain from any linguistic excesses or verbal or physical violence against their opponents;
>
> "to avoid making gratuitous, unjustified or insulting accusations against their opponents or competitors;
>
> "to help the Electoral Council to detect and thwart any fraud or attempts at fraud that might be perpetrated by certain citizens, unworthy of participating in an honest and peaceful competition."

106. On 17 November 1990, the CEP warned the excluded candidates against "any attempt to disrupt the electoral campaign," and reserved the right to:

> "call to order any candidate, coalition, party or political group whose supporters or members jeopardize the lives or property of the people;
>
> "summon any candidate, coalition, party or political group whose supporters have prevented another candidate, coalition, party or political group from campaigning;

"cancel the declaration of candidacy of any candidate or coalition whose supporters, party or political group refuse to comply with the CEP's orders;

"hand over to the law any individual or group of individuals caught in flagrante delicto attacking the lives or property of the people".

107. On 19 November, the Secretary-General of the CEP, Mr. Jean Casimir, said that "excluded candidates are not allowed to campaign, unless they are heads of parties supporting the candidacies of members of their own political organization".

108. On 18 November 1990, Army Day, Commander-in-Chief Hérald Abraham exhorted officers, non-commissioned officers and rank and file to "behave with professionalism" and added that "the army intends to remain the vigilant guardian of the institutions that have been in existence for nearly two centuries of independent life".

109. On 22 November 1990, the CEP issued credentials to 344 observers and journalists. It indicated that the OAS and United Nations observation missions reflected "its desire to organize honest, credible, sincere and democratic elections".

110. Generally speaking, with the exception of a few regrettable incidents, the electoral campaign had been fairly correct until the news arrived, as this report was being completed, that there had been an attack against the supporters of Father Jean-Bertrand Aristide, who was favoured to win the presidential election. The grenade attack occurred on 5 December after an electoral meeting at Petionville, a residential suburb of Port-au-Prince, when several hundred people were leaving the meeting; 7 were killed and 46 were reported wounded. Father Aristide had already departed when the explosion occurred.

II. PRESENT LEGAL FRAMEWORK OF THE HUMAN RIGHTS SITUATION IN HAITI

A. State institutions

111. Mrs. Ertha Pascal Trouillot's accession to the presidency created a new de facto situation, which should be analysed.

112. Mrs. Trouillot was not elected to the post of President of the Republic, any more than her predecessors, General Avril and General Namphy, had been. The new Provisional Government was not an essentially constitutional Government. At least the Consultative Assembly (called the "Group of 12") attempted to base itself directly on the 1987 Constitution, article 149 of which stipulated that "Should the office of President of the Republic become vacant for any reason, the President of the Court of Cassation of the Republic, or in his absence, the Vice-President of that Court, or in his absence, the judge with the most seniority and so on by order of seniority, shall be invested temporarily with the duties of President of the Republic ...".

113. However, it was neither the President, nor the Vice-President, nor the most senior judge who was chosen, whether because there was strong objection to them by the Consultative Assembly and public opinion, or because they refused. In the end, it was the youngest judge who accepted the office - an act of undoubted courage, for it was a difficult post to take up during such a troubled period.

114. In addition to its expressed determination to base itself on the spirit of the 1987 Constitution, the Consultative Assembly wanted to set up a permanent mechanism for overseeing the executive: that was the idea behind establishing a Council of State. The existence of such a Council was not provided for anywhere in the Constitution; this was an original body, although it had existed before, in other forms, in the course of Haiti's history.

115. After the many coups d'état which occurred from February 1986 to 1989, there was a need to emphasize, first of all, that the Government was in fact only provisional in nature, next, that it would only manage current business, that elections would be organized as rapidly as possible, and, finally, that there must be a permanent balance between the executive and the Council of State, the latter acting as a sort of parliament, basically in a supervisory role.

116. The appointment of several democratic ministers concerned with human rights, as mentioned earlier, also reflected a determination to liberalize the régime. Similarly, the designation of a Provisional Electoral Council according to constitutional procedures and the appointment of the Chairman of the 1987 CEP to head it were very encouraging signs.

117. The establishment, thanks to the shared political will of the executive, the Council of State, the CEP and the army, of mechanisms for ensuring the security of the electoral process led to large-scale registration by citizens and the gradual acceptance, by the vast majority of the country, of United Nations and OAS assistance and observers.

118. The judicial system, however, remained the weak point. The problem of the independence of the judicial system in relation to the former Duvalier régime remained a serious difficulty, and its investigative capacity remained very limited; the main crimes committed in recent years, and in particular the November 1987 and September 1988 massacres, have gone unpunished.

B. International commitments

119. In December 1990, Haiti was a party to the following human rights conventions adopted by the United Nations: the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention on the Suppression and Punishment of the Crime of Apartheid; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Prevention and Punishment of the Crime of Genocide; the Slavery Convention; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the Convention relating to the Status of Refugees; the Protocol relating to the Status of Refugees; and the Convention on the Political Rights of Women.

120. On the occasion of the fortieth anniversary of the Universal Declaration of Human Rights in December 1988, General Avril had pledged to accede to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the OAS Inter-American Convention to Prevent and Punish Torture, and to sign the Additional Protocol to the American Convention on Human Rights.

121. He did not do so either in 1988, 1989 or 1990. During the Expert's visit to Haiti in June-July 1990, he reminded the President of the Provisional Government and the Minister for Foreign Affairs of those commitments, repeated several times during his interviews with General Avril. Mrs. Trouillot said that she was prepared to deposit the instruments of ratification, but by early December 1990, no concrete moves had been made to that effect. Thus we will have to wait until the new President of the Republic is installed in office, following the 16 December election, in order to consider human rights issues on new bases.

III. PRESENT HUMAN RIGHTS SITUATION IN HAITI

122. We will begin our consideration in January 1990, which was the point at which the report submitted to the Commission on Human Rights at its forty-sixth session ended. The period 1986-1989 was examined in detail in that report and also in the report to the Commission at its forty-fifth session.

A. Principal violations of human rights

123. This study should be divided into two periods: the first two months of the year, which corresponded to the end of the Government of General Avril, and, from 10 March 1990 onwards, Mrs. Trouillot's Provisional Government.

124. Regarding the month of January 1990, it suffices to refer to the addendum submitted to the Commission at its forty-sixth session (E/CN.4/1990/44/Add.1) for a detailed description of events, which were a sort of paroxysm preceding the inevitable fall of the Avril Government, the suspension of numerous articles of the 1987 Constitution and the introduction of a 30-day state of siege and of visas for Haitians wishing to travel. Numerous extremely brutal arrests took place and censorship was brought in. For the precise circumstances of this period, the reader is referred to paragraphs 4-24 of document E/CN.4/1990/44/Add.1.

125. The state of siege was lifted on 29 January 1990, as announced, and, on 7 February, the Minister of Information proclaimed an amnesty for 19 political prisoners, including Jean Auguste Mesyeux, Evans Paul and Etienne Marineau, who had been arrested in November 1989, and Frantz Patrick Beauchard, one of the sergeants who had put General Avril in power.

126. But the period in general, like the preceding periods, was characterized by violence in rural areas and peasant massacres, particularly in the region of Artibonite; later, as the elections approached and looked more and more likely to be held, there was violence of a political nature; finally, there were a number of provocative incidents from July 1990 on, with the return of William Régala, Claude Raymond and Roger Lafontant.

127. The negative role played by certain section heads, described in previous reports submitted to the Commission on Human Rights, unfortunately did not change, and was calculated to discourage voters in rural zones from going to the polls, although ultimately this did not occur. Rather than provide a tedious list of individual human rights violations, it seems preferable to limit ourselves to a few particularly significant general trends.

1. The role of the section heads and the peasant massacres

128. It has already been indicated that 75 per cent of the Haitian population lives in rural areas. The rural sections come under section heads, who are often the sole representatives of the State in the countryside; they deal with maintaining order, markets, tax collection and land problems. Many of them have regularly misused their power and engaged in various kinds of extortion against the population they are supposed to protect. They have one or more assistants and report directly to the commander of the military district.

129. They often buy their office, at prices that may range from $2,000 to $10,000, and usually earn $120 per month. Their assistants are not supposed to earn a salary and thus obtain their money from the population. They pay the section heads a portion of what they receive, and in this way the system of corruption is maintained.

130. The principal massacres in 1990 occurred in Artibonite, a region with a tradition of intense conflict. When they were not directly responsible for them, the section heads allowed them to take place.

2. Massacre at Piate (12 March 1990)

131. Piate is situated in a poor mountainous area in the first communal section of Montrouis (Artibonite). Peasants in the area have long been opposing a non-resident landowner, Olivier Nadal, who they say robbed them of 100 hectares of fertile land. They therefore attempted to occupy the land. On 13 March, the section head and his assistant killed a resident. The two assassins were killed in retaliation and their bodies were burned. Immediately thereafter, a group of residents from Deluge, armed with machetes, rushed off to Piate and clashed with 30 soldiers from the Saint-Marc garrison under the command of Lieutenant Bazil. With the help of the group from Deluge, the soldiers burned and sacked the village of Piate: 8 peasants were killed, 335 houses burned, fields destroyed and cattle killed; 2,000 peasants were left homeless.

132. Shortly after the massacre, Commander-in-Chief Abraham gave instructions to restore order. The Minister of Justice announced that an effort would be made to find solutions to the land disputes in Artibonite, and that legal proceedings would be instituted against the perpetrators or instigators of the crimes, but nothing of note has been done.

3. Massacre at Délatre (16 March 1990)

133. On 16 March 1990, a group of people from Délatre decided to "eradicate" ("déchonquer") Marène Lambert, a section head, and, not finding him at home, burnt his house. Two elderly neighbours were killed between 16 and 20 March by the section head's assistants, to whom they had complained about the fire. On 21 March, section head Lambert recruited approximately 200 persons armed

with pistols, picks and machetes, while another group from Délatre had come out unarmed to attempt once more to "eradicate" Lambert. The two groups clashed, and 11 to 13 persons from Délatre were killed.

134. The Petit Goâve military authorities took away the bodies and attempted to arrest a few members of the defence committee. On 7 April, they arrested a local Catholic Church leader, Raphael Germain, which led to a march by several dozen persons in Petit Goâve, demanding his release and the arrest of Marène Lambert and other persons responsible for assassinations. No disciplinary action or legal proceedings have been taken against Lambert.

4. Massacre at Pérodin (31 May 1990)

135. At least seven persons were killed at Pérodin, fifth communal section of Petite Rivière in Artibonite, by Sillien Thélot, former section head ousted by the population, who came back to take revenge accompanied by over 25 assistants. He fired shots in all directions, killing several people, and was then captured by the villagers and killed with machetes. Many persons were also wounded.

136. About 15 persons were then arrested by soldiers, under the command of Major Maxi Maxime, for the death of Sillien Thélot, but only one person was arrested for the deaths of the civilians. Among those arrested were the representative of the Justice and Peace Commission and a member of the peasant organization Tet Kole (heads together).

137. The destructive role played by Sillien Thélot had been repeatedly pointed out in the past, especially by the Catholic Church, and the Justice and Peace Commission had submitted a detailed file to the area's military commander describing Sillien Thélot's abuses since 1989. (He had been appointed section head in April 1989 and since then had been the subject of large numbers of complaints for extortion, ill-treatment, beatings, etc.).

5. Assassinations of 21 June 1990

138. On 21 June 1990, Serge Villard, a respected member of the Council of State where he represented the private enterprise sector, and Jean-Marie Montes, a trade unionist, were assassinated while participating in a meeting between the Council of State and grass-roots organizations.

139. Whoever the culprits were, this was a political crime, the basic goal of which was to intimidate the Council of State and the grass-roots forces. Three gunmen, two in military uniform, participated in the operation. Serge Villard died three days later, and Jean-Marie Montes was killed outright. According to several accounts, the attack had been aimed against the President of the Council of State, Dr. Louis Roy.

140. The police did not arrive until half an hour after the events. The Government declared two days of national mourning, but the investigations were not pursued very actively, and, according to a press release by the Ministers of the Interior and Justice dated August 1990, the judicial and police inquiries were stagnating and still in a preliminary phase seven weeks after the events. The assassination came to the fore again in October, when a group of United States experts went to Port-au-Prince to assist the police and judicial authorities in their investigations.

141. The attack on 5 December 1990, at the close of an election rally for Father Aristide in Petionville, was also political in nature. At the time this report was prepared, the Expert did not have details on the circumstances of these assassinations, but there is no doubt that there were attempts at intimidation.

142. There were other acts of violence during the year, against vigilance brigades in Port-au-Prince (for example, 15 persons killed during the night of 22/23 March 1990), against the press, against political personalities: Maris Michèle Gaillard de Ronceray (wife of Hubert de Ronceray) on 22 March 1990; Sylvio Claude (candidate of the Christian Democratic Party in the presidential election) during the night of 4/5 April 1990; Irène Ridore, Mayor of Port-au-Prince, repeatedly threatened or attacked; the most typical example having occurred on 30 April 1990, when a man named Kesner Sylvestre fired a shot at her: although immediately arrested, he was released the same day.

B. Responsibility for violations, and government investigations, during 1990

143. First, it can be said that, since the assumption of power by Mrs. Trouillot's Provisional Government, the army - despite some difficulties and a number of individual acts of extortion - has respected its undertakings not to interfere with the normal functioning of institutions. General Abraham, Commander-in-Chief of the armed forces, used what means he had to ensure the security of the election preparations, the installation of the CEP, the election campaign and, lastly, the elections themselves.

144. Also, in some recent cases of human rights violations, there was somewhat greater determination to stop them. For example, a commission of inquiry, consisting of the Minister of Justice, four Councillors of State and the Government Commissioner, went to Cabaret on 23 April 1990 to investigate incidents that had occurred the week before. Twenty detainees were freed following that visit.

145. Similarly, the Government Commissioner, Mr. Bayard Vincent, asked the armed forces to help him find the legal documents needed to bring to justice the suspected perpetrators of the massacre of 29 November 1987. So far, however, no file has reached the prosecution to enable it to start judicial proceedings.

146. One of the suspected assassins of Joseph Lafontant appeared in court at Port-au-Prince and four witnesses to the massacre in the church of Saint-Jean-Bosco on 11 September 1988 brought charges against him. But, because of the ineffectiveness of the justice authorities and of summary executions, "eradications" have continued to be committed by the Haitian people.

147. The Government Commissioner has repeatedly complained about the lack of co-operation on the part of the army and the inefficiency of the justice authorities, in particular as regards the massacre of Saint-Jean-Bosco, in which persons who have been implicated and arrested (Paul Joseph, Kesner Pongnon) are not brought before the courts, while others remain free despite the warrants of arrest issued against them (Rodrigue Monestine, Willy Jean).

148. Insecurity remained high throughout the year and the protection of institutions did not seem effective.

149. Certainly, the most flagrant case of impotence is that of Roger Lafontant, who returned to Haiti on 7 July 1990 accompanied by William Régala, although a warrant of arrest had been issued against him. As Minister of the Interior and of Defence under Jean-Claude Duvalier between 1982 and 1985, he had headed the VSN (National Security Volunteers), more generally known as the "Tontons Macoutes", in the late 1970s. Among other serious abuses, he is suspected of having personally tortured a number of persons, including the journalist Pierre Robert Auguste and Pastor Antoine Leroy.

150. Despite the order of Minister of the Interior Joseph Maxi to arrest him, the head of security at the airport, Captain Patrick Bastien, had Lafontant taken into the VIP lounge, claiming that he "never received any instruction from his superiors to arrest Roger Lafontant".

151. On 8 July, Bayard Vincent, the Government Commissioner, issued an arrest warrant against Lafontant, which was annulled by Judge Justin Fougère on 9 July and again by the Senior Judge of the Civil Tribunal, Arnold Charles.

152. Another arrest warrant was issued on 10 July but not executed. A third, dated 16 July, was, like the others, not executed either. Meanwhile, the Government Commissioner began to receive death threats, in particular, at hearings on 18 and 20 July before Judge Charles. The army claimed that it had not been able to find Roger Lafontant, although he had announced his candidacy for the office of President of the Republic and was making numerous public appearances, holding a rally on 8 September and going to various provinces to organize gatherings. For example, on 13 and 14 October, at Port-au-Prince, hundreds of Duvalier followers held a political convention, at which Lafontant appeared armed and in uniform and was proclaimed head of a new party, the Union for National Reconciliation.

153. What is more, on 5 October 1990, a decree of the Provisional Government established a commission of inquiry to clarify "... the causes and circumstances of the tragic events that took place at Port-au-Prince on 26 April 1986, 29 November 1987 and 11 September 1988, at Santos on 21 June 1990, and at Petionville on 29 June 1990, as well as those at Jean Rabel, Labadie, Piate, Cabaret and Pérodin". The commission is to "gather the complaints and grievances of victims of the crimes and offences committed during the above-mentioned events; collect all information from any witnesses to those events [and] convoke, for investigation, all persons reported to it by witnesses or by the victims themselves". These good intentions are laudable, even though they have produced no concrete results to date.

154. It can therefore be said that the installation of the Provisional Government of Mrs. Ertha Pascal Trouillot was marked by a noteworthy statement of intentions, that the armed forces have gradually begun to change their attitude especially with regard to the electoral process, but that there are still numerous violations, that justice is still as non-existent as ever and that the pressure of the Duvalier forces is still sufficiently strong to prevent the authorities from putting an end to their pernicious activities.

IV. MISSION TO HAITI AND SUBSEQUENT ACTIVITIES

155. The Expert visited Haiti, accompanied by an official of the Centre for Human Rights at Geneva, from 26 June to 5 July 1990, with a view to having contacts with the country's new authorities, democratic elements and non-governmental organizations; to observing developments and the evolution of institutions; and to evaluating the human rights situation since the beginning of the year. It was also necessary to consider, with the Provisional Government, the measures taken to complete the electoral process.

156. Before arriving in Haiti, the Expert made a brief stop in New York, to go to United Nations Headquarters and see the Personal Representative of the Secretary-General, Ambassador João Augusto de Medicis, and his team, and to discuss with him the development of the electoral process and of the situation in general. During the stop in New York, there was also a discussion with representatives of the Americas Watch Association and especially with Kenneth Roth, Mary Jane Camejo, Ann Fuller and Jocelyn Maccalla of the National Coalition for Haitian Refugees (NCHR).

157. At the government level, the Expert had conversations with the Head of State, Mrs. Ertha Pascal Trouillot, accompanied by her Minister for Foreign Affairs, Mr. Kesler Clermont, who also received him for a separate talk; with Mr. Joseph Maxi, Minister of the Interior; Mr. Pierre C. Labissière, Minister of Justice, and Mr. Jean Thomas, Minister of Defence. He also met the Mayor of Port-au-Prince, Mrs. Irène Ridore (later dismissed), accompanied by her husband Mr. Evans Paul; all the members of the Provisional Electoral Council and in particular its Chairman, Mr. Sabalat, and Secretary-General, Mr. Casimir; the Commander-in-Chief of the armed forces, Lieutenant General Hérald Abraham; all the members of the Council of State, including its Chairman, Dr. Louis Roy; and the officers of the Co-ordinating Committee for the Security of the Elections, Colonels Cedras, Silva and Duperval.

158. It is worth noting that the welcome received from government authorities was much warmer than in previous visits. The Minister of the Interior, for example, accompanied by the Director of Civil Aviation, Mr. Jeune, came to meet us at the airport and immediately granted us a first interview.

159. The Expert also met representatives of the Church at various levels: members of the Justice and Peace Commission, members of the Episcopal Conference, and Father Antoine Adrien (of the Honour-Respect for the Constitution group). Father Aristide, who had been met during earlier visits, was away, travelling in Europe.

160. Several meetings were held with members of the diplomatic corps, including Mr. Pierre Guigere, Ambassador of Canada; Mr. Hugo Alvarez Pifano, Ambassador of Venezuela; Mr. Karl-Otto Koenig, Chargé d'affaires of Germany; Mr. Raphael Dufour, Ambassador of France; Mr. Sergio Romero Cuevas, Ambassador of Mexico; Mr. Alvin Adams, Ambassador of the United States; Mr. José del Carmen Acosta y Carrasco, Ambassador of the Dominican Republic; and the Apostolic Nuncio.

161. Meetings and talks were also held with leaders of the democratic sector and with politicians: Mr. Serge Gilles (seen in France a few days before the departure of the mission); Dully Brutus and Arnold Antonin, Haitian Progressive Revolutionary Nationalist Party (PANPRA); Mr. Victor Benoit,

National Committee of the Congress of Democratic Movements (KONAKOM); Mr. Magloire, MNP28; various members of the Honour-Respect for the Constitution group, (Father Antoine Adrien, Misha Gaillard etc.); and Mr. René Théodore, Unified Haitian Communist Party (PUCH). Mr. Marc Bazin (of MIDH) was not contacted because he was travelling in the United States.

162. The Expert was also able to obtain information from most of the organizations defending and promoting human rights in Haiti: the Haitian League for Human Rights (Attorney Jean-Claude Nord), the Haitian Lawyers' Committee (Moyse Senatus), the Centre for Rights and Freedoms - CHADEL (Jean-Jacques Honorat), the League of Former Political Prisoners of Haiti (Mr. Robert Duval), and the Ecumenical Mutual Aid Service (Mr. Daniel Henrys). There were also talks with the press and television (Haiti Solidarité International, Radio Métropole).

163. On 30 June and 1 July 1990, the Expert travelled to Saint-Marc and several rural sections of the Artibonite region. He was accompanied by Father Gilles Danroc, member of the Justice and Peace Commission, and two United States jurists, Mr. William G. O'Neill and Mr. Elliot J. Schrage, members of the Lawyers' Committee for Human Rights. During the trip, he visited Saint-Marc prison, met the Commander of the Subdistrict, Captain Ira Irak, and had numerous conversations both with Saint-Marc prisoners and with peasants of a number of rural sections, and lastly with several priests working in the Artibonite region.

164. The visit to Saint-Marc prison enabled the Expert to see for himself the prisoners' very bad conditions of detention. Most of them are very thin and clearly undernourished. They must pay for their food and water. Hygienic conditions are deplorable: the prisoners sleep directly on the ground without a mattress, 30 to 40 per "dormitory" in a large room without light or windows. There is only one shower for all the prisoners, and it is not always in working order. The toilets are disgustingly filthy.

165. Most of the prisoners had not seen a judge (whereas the Constitution provides that detention may not exceed 48 hours without a hearing by a judge). According to the list posted at the entrance, of 63 prisoners (59 men and 4 women), on the day of our visit, 5 men had been sentenced and 54 were awaiting trial. According to the prisoners, these "provisional" detentions vary in length, from a few days to 16 or 18 months.

166. The roll of prisoners is rather well kept, containing for each prisoner: name, date and place of arrest, arresting authority, date of offence and, where appropriate, sentence and transfer. During the visit the Expert spoke to the former head of the Pérodin section and certain participants in the massacre of 31 May 1990.

167. At Verettes, the Expert, visited the dwellings of peasants of the fourth, fifth and sixth sections in the company of parish priests, and spoke to many of them. This offered an opportunity to gather direct evidence on the role played by the section heads of the area in their daily harassment of the peasants, and in the preparation of the climate of violence that had preceded the massacre of 29 November 1987 during elections. This applied to the case of Joseph Milo for the fourth section, and to that of Nelson Dorval (known as Nelon) for the fifth section, both of them appointed by General Namphy in reward for their activities in 1987 to prevent the elections.

168. We were able to gauge not only the anxiety of the peasants, none of whom has forgotten the events of November 1987 or those responsible for them, but also their great organizing ability. For example, they have created something like volunteer "justices of the peace" so as not to have to complain to Nelon (the section head) and to pay him for each visit. They have established economic interest groups, so as not to have to go to the State in case of disputes. Disputes are settled internally on a footing of equality.

169. Lastly, various informal meetings were held with Haitian personalities or foreigners living in Haiti, and the Expert had conversations in France with visiting Haitian personalities.

170. We wish to stress once again the valuable assistance received from the UNDP Resident Representative and the entire mission. They all greatly facilitated the many contacts we managed to have, and placed at our disposal the equipment of the Port-au-Prince mission. We thank them once again on this occasion. UNDP's activities in Haiti deserve special mention because they are much broader than those of the usual development aid mission and to a very large extent are concerned with the "human rights dimension". There are many examples of this but we shall cite only one: the translation into Creole of the Universal Declaration of Human Rights and its wide dissemination throughout the territory. On 5 July 1990, we attended a press conference at which relevant educational material was presented. The text itself, accompanied by numerous very instructive illustrations, constitutes an excellent pedagogical document for teachers and community leaders, who publicize it throughout the country. In addition, it is accompanied by an advertising campaign on radio and television, which helps to reach a vast public.

171. The Expert supplemented the work done during his mission by studying numerous governmental and non-governmental documents received during the year from Port-au-Prince, New York and Geneva. In view of the elections to be held on 16 December 1990 and 20 January 1991 and of the very important changes which are bound to ensue, it was decided, in agreement with the Centre for Human Rights and the United Nations Secretariat, to entrust the Expert with a new mission at the end of January 1991.

172. There has been no change for the better in the economic situation since the report submitted to the Commission in 1990 (E/CN.4/1990/44, paras. 97 and 98).

173. With a constantly expanding population which, according to IDB estimates, amounts to approximately 6.3 million, the population density is 220 inhabitants per square kilometre - which is considerable for a largely rural country. A very large proportion of the population still suffers from malnutrition; medical care is inadequate (1.8 doctors, 0.2 dentists, 1.9 nurses - most of whom are in urban areas - per 10,000 inhabitants).

174. More than 77 per cent of the population is illiterate (90 per cent in rural areas) and the literacy programme has been suspended. Only 45 per cent of school-age children regularly attend primary school and 10 per cent, secondary school. The public debt is growing, and the amount of external aid has fluctuated considerably depending on the political environment. Emigration and the "boat people" phenomenon have continued, although they appear to be declining somewhat as compared with previous years.

175. Only a lasting stabilization of political life following the elections of December 1990 and January 1991 could help impr e the economic situation, end corruption, promote the supervised utilization of greater international aid and halt attacks on human rights.

176. For the time being, the instability which has been an essential feature of the long period of transition towards democracy that began on 7 February 1986 does not seem to have ended. However, the determination of the provisional presidency, the Council of State, the CEP, the army and the great majority of political forces to see through to the end a democratic, fair and non-violent electoral process constitutes real evidence of a changed state of mind. The determination with which the United Nations, the OAS, and a large number of governmental and non-governmental organizations are aiding that process is increasing its chances of success. The massive registration of voters in late November and early December suggests that the results of the elections will be significant.

177. On the other hand, the findings in the 1989 and 1990 reports concerning the failure of the justice authorities to play their role unfortunately remain true: they are still characterized by incompetence, lack of will or independence, links to Duvalierism and even corruption. The Roger Lafontant episode is only one illustration of many other cases.

178. The attitude of Mrs. Trouillot towards the elections has been very different from that of General Avril, and the determination to hold them and to ensure their security by the army has not faltered.

V. PROVISIONAL CONCLUSIONS

179. In view of the mission planned at the end of January 1991 both to evaluate the results of the electoral process and to meet the newly elected President, these general conclusions will be only provisional. They may be summed up as follows:

(a) The installation of a Provisional Government in March 1990, backed up by a Council of State representative of the various sectors of civil society, marked progress over the preceding military Governments;

(b) The undertaking of December 1988 to ratify the international human rights conventions, has not yet been honoured;

(c) The Government and the judicial authorities have still not taken effective measures to investigate past and present violations of human rights and to bring the guilty to justice;

(d) They have not been able to put a stop to the abuses being committed with impunity by section heads in rural areas or to prevent the occurrence of serious violations of human rights: massacres of peasants, murders of political and trade-union leaders;

(e) The principal obstacles hindering the process of real improvement in the human rights situation in Haiti have not been removed:

(i) an ineffective judicial system;

(ii) highly militarized rural areas;

(iii) the failure to separate the army and the police forces;

(iv) the fact that the persons responsible for the principal massacres, in particular those of 29 November 1987 and 11 September 1988, have not been put on trial;

(f) The paramilitary forces have continued to lose some of their economic and financial power, but they still have enough to remain dangerous and to hinder the movement towards democracy;

(g) Many provisions of the 1987 Constitution have been restored but the Government, having no basis in law, remains very provisional and must hand over to an elected Government;

(h) It has accordingly organized the electoral process with the support of the CEP, the army and the Council of State; a continuation of this process without violence would mean a great step forward;

(i) The situation as regards respect for economic, social and cultural rights is still very disturbing; only the stability of a democratically elected president can open the way to correction of the situation.

VI. PROVISIONAL RECOMMENDATIONS

180. In conformity with his mandate under resolutions 1987/13, 1988/51, 1989/73 and 1990/56 of the Commission on Human Rights, the Expert submits the following recommendations:

(a) The Commission must continue to monitor the human rights situation in Haiti, with a view to fostering the incipient improvement observed;

(b) It should express its concern at the persistence of serious violations of human rights and fundamental freedoms, despite the prospect of real democratic change;

(c) The Commission should also express its great satisfaction at the smooth way in which the elections have proceeded, but it should maintain an independent expert and instruct him to continue studying the development of human rights in Haiti, in view of the fragility of the process and the instability observed in the last five years;

(d) If the elected President submits requests for technical assistance, they should relate to the administration of justice, aid to the poorest communities and the police, so as to foster the organization of civilian police services trained in human rights and in the minimum standards for maintaining order.

181. Those are the recommendations submitted by the Expert as a result of his third mission to Haiti. He considers it very important to pursue the dialogue with the new Government of Haiti which should take up office in February 1991 and to establish a fruitful exchange with it aimed at constantly improving the human rights situation.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the human rights situation in Haiti prepared by Mr. Philippe Texier, Independent Expert, in accordance with Commission on Human Rights resolution 1990/56

I. INTRODUCTION

1. The report submitted by the Expert at the Commission's forty-seventh session covers the period January-December 1990 but does not extend as far as the first round of elections held on 16 December 1990. Since the period of the elections and the period immediately following them were particularly eventful, it appeared helpful to travel to Haiti early in 1991, shortly before the President Elect took office, in order to update the information submitted to the Commission.

2. It was in these circumstances that a mission by the Expert, accompanied by a staff member of the Centre for Human Rights, took place in Haiti from 25 January to 2 February 1991. Thanks to this mission, contacts were made with the President Elect, the President of the Provisional Government, several Ministers (Interior, Foreign Affairs, Justice, Social Affairs), the Provisional Electoral Council and the Council of State, and with the head of the United Nations Observer Group for the Verification of Elections in Haiti (ONUVEH), OAS and various Haitian, foreign and international non-governmental organizations.

3. The Expert also met representatives of the principal political parties, successful candidates in the most recent elections (deputies, senators, mayors), and representatives of human rights organizations. He heard on-the-spot testimony by various persons about recent events in Artibonite (Saint-Marc, Pont-Sondé and Gervet) and Port-au-Prince (sacking of the Papal Nuncio's Residence, for example), and met the Government Commissioner for Port-au-Prince to learn about inquiries under way.

4. The present addendum to the report will cover three main themes: the conduct of the elections, the human rights situation and prospects for 1991.

A. The conduct of the elections

5. As early as March 1990, in the first few days after taking office, Mrs. Ertha Pascal Trouillot, President of the Provisional Government, expressed her intention to organize general elections and submitted a request for electoral assistance. Thus an initial programme of technical assistance, financed by UNDP, was immediately set in train. The first mission, led by Mr. Horacio Boneo, arrived in Port-au-Prince on 22 March. A few days after the installation of the new Provisional Electoral Council (CEP), a second technical assistance mission got under way on 15 June 1990.

6. The request was subsequently formalized by means of a number of letters from the President dated 23 June, 9 August and 14 September 1990, and the General Assembly responded to them through resolution 45/2 relating to electoral assistance to Haiti, which was adopted by consensus on 10 October 1990.

7. The whole of the preparatory phase of the elections was described in some detail in the main report, and so we shall not dwell on it here. Only the elections themselves will be briefly described.

8. On 16 December 1990, the 3,227,155 registered electors were called upon to elect:

1 President of the Republic out of 11 approved candidates;

27 senators out of 119 approved candidates;

83 deputies out of 337 approved candidates;

135 three-member municipal councils from 534 approved candidates;

565 three-member local district administrative councils (CASECs), from 1,539 approved candidates.

9. The massive registration of electors (which even exceeded the population of voting age as estimated by statisticians) aroused fears of double registration. To prevent this, the CEP used indelible ink, into which electors were required to dip their thumb after voting. The presence, in all registration and polling stations (BIVs), of representatives of the political parties and foreign observers prevented attempts at intimidation or fraud.

10. Practical preparations for the elections - organization of sufficient polling stations, training of polling officers, determination of procedures, distribution of materials (ballot papers, polling booths, ballot boxes, ink, etc.) - were lengthy and complex, as were the transmission and computerized processing of the results.

11. On the basis of our interviews with Mr. Sabalat, President of the CEP, and Mr. Boneo, Chief of Electoral Operations, and the various reports prepared on the subject (in particular, the ONUVEH reports of 14 December 1990 and 25 January 1991), it may be said that the elections took place without violence, the ballot was secret and there were no attempts at intimidation.

12. ONUVEH report A/45/870 describes the first round of elections as having taken place without major incident. The people of Haiti were able to vote in freedom and security, without being subjected to pressures of any kind. For the first time in Haiti's history, they participated in democratic and dignified elections in which they may take legitimate pride.

13. It was not until 11 January 1991 that the CEP announced the final results of the first round of elections: out of 3,271,155 registered voters, 1,640,729, or 50.2 per cent, voted. However, this figure does not give a true picture of the turnout since it does not include spoiled papers or votes which could not be counted because of poor organization of the collection of data and counting of results (returns illegible or unusable in some cases, BIV documents lost).

14. According to estimates by ONUVEH, the turnout was between a minimum of 62.5 per cent (2,044,472) and a maximum of 71.4 per cent (2,335,605), the most likely figure being around 67 per cent of registered voters.

15. On the basis of these figures, Father Jean-Bertrand Aristide, the President Elect, won 67.48 per cent of votes, Marc Bazin, the runner-up, won 14.22 per cent and Louis Dejoie, in third place, won 4.88 per cent.

They were followed by Hubert de Ronceray (3.34 per cent) and Sylvio Claude (3 per cent). The six other candidates received between 1.83 per cent and 0.62 per cent of votes cast.

16. Between the two rounds, as the ONUVEH report emphasizes, the political climate remained calmer than might have been expected, and the demonstrations following the first round went off quietly. This was due to the massive voter turnout, the substantial majority achieved by the successful candidate and the immediate acknowledgement of his victory by all the sectors concerned and by the international community.

17. The prevailing calm was shattered by the attempted coup d'état by Doctor Roger Lafontant, which is described later in this report. It was thwarted within a few hours but led to regrettable looting, in particular of the Nuncio's Residence (see below), and the re-emergence of a certain amount of popular mistrust.

18. The second round was nevertheless held, still in the presence of ONUVEH observers, in an atmosphere that remained calm, but with a smaller turnout than for the first round, the people of Haiti obviously feeling that the presidential election was the more important one. Electors had the opportunity of expressing their preference freely and in complete security. In some constituencies elections could not take place because of problems relating to the lack of electoral materials. The CASEC elections in certain communes were accordingly postponed until 27 January.

19. The final results of the elections to the National Assembly and the Senate revealed the same trends as for the presidential elections: the National Front for Change of Democracy (FNCD), which supported Father Aristide, came first both in the Assembly and in the Senate, and the ANDP, */ the party of Marc Bazin and Serge Gilles, finished second, but the FNCD did not, however, win an absolute majority. The Prime Minister's choice will, in accordance with the 1987 Constitution, have to take account of all these results. The FNCD returned 27 deputies, the ANDP 7, the PDCH 7, the PAIN 6, the RDNP 6 and the other parties between 1 and 5, giving a total of 81; the absolute majority is therefore 41. In the Senate, the FNCD won 13 seats and the ANDP 6, out of a total of 27; the absolute majority is 14.

20. The smooth conduct of the elections, both as regards their reliability and honesty, and as regards security, paves the way for the establishment of a strong, effective and cheaper electoral system which will serve as a basis for further, well-organized elections. In accordance with the Constitution, one third of senators will have to seek re-election in 1992, and another third in 1994, together with the Chamber of Deputies, mayors and the CASECs;

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*/ ANDP - National Alliance for Democracy and Progress

PDCH - Haitian Christian Democrat Party

PAIN - National Agricultural and Industrial Party

RDNP - Union of Progressive Nationalist Democrats.

presidential elections are due to be held again in 1995. In other words, the democratic process which has just got under way will require consolidation of the electoral system.

21. The 1987 Constitution provides for the immediate establishment of a permanent electoral council, but this body will clearly have a complex task and will, in particular, have to compile a permanent electoral register and improve the keeping of civil registers. It will also have to devise an elector's card or similar document and train its own staff and other staff who will be working for it. In the long term, civic instruction will have to be provided for all citizens. In all these areas, the United Nations should be able to lend its assistance to the Haitian people.

B. The human rights situation

22. Violations of human rights have unfortunately not ceased in Haiti during the two months (December and January) covered by this addendum to the report. They may be said to have taken two main forms:

(a) Land disputes and abuses by section chiefs or members of the armed forces in rural areas; and

(b) Attempts to impede the democratic process and reactions to such attempts.

1. Land disputes

23. The report submitted at the forty-seventh session examined the question of abuses by section chiefs and land disputes, particularly in the Artibonite region (massacres at Piate, Perrodin, Cabaret, for example, in March and May 1990). It was again in this region, in circumstances very similar to those of the earlier events, that a particularly serious massacre occurred, a few days before our arrival in Haiti.

24. At dawn on Thursday, 17 January 1991, there was a massacre at Gervet, fifth section in Saint-Marc (Bocozelle, in the south of the department of Artibonite). The following outline of the facts is the result of our on-the-spot inquiry, at Saint-Marc and Gervet, our conversations with the Justice and Peace Commission in the diocese of Gonaives, with Mr. Camille Leblanc, a lawyer dealing with the case, and with Mr. J.J. Honorat (Haitian Centre for Rights and Freedoms - CHADEL), and examination of the reports submitted by various bodies, in particular the Justice and Peace Commission in Gonaives.

25. The origin of the dispute was 60 carreaux (approximately 70 hectares) of land belonging to the State situated in an area known as Tè Casé (broken land). Two large local landowners are in dispute over this land; they both live in Saint-Marc, but one of them, Polinis Volsi, comes from Guitton and the other, Anous Julien, from Gervet.

26. The two villages (Guitton and Gervet) border each other in the rural section of Bocozelle. Each of the landowners has allowed peasants from his village of origin to use the land. The dispute grew more acrimonious as a result of the destruction, by inhabitants of Gervet, of a rice storehouse built in Guitton by Polinis Volsi.

27. At dawn on 17 January 1991, the chief of the fifth section of Saint-Marc came to Gervet, accompanied by two deputies; an argument broke out, and Exantus Oresi, known as Exan, the leader of the peasant community, was killed. The villagers immediately took vengeance by attacking the two deputies, Jean-Louis Vilboin and Albert Méra, who were killed.

28. Between midday and 4 p.m., 21 military personnel from Saint-Marc arrived in Gervet and began shooting at the villagers; the soldiers were bare-chested, wore fatigue trousers and used military weapons. The villagers began to run away and the aggressors set about looting, systematically burning houses, cattle and crops.

29. According to the CHADEL, the justice of the peace refused to come and draw up a report of what had happened. On 21 January, the captain in Saint-Marc submitted a report to the commander of the department of Artibonite, stating that the section chief and his deputies had been attacked for no apparent reason by inhabitants of Gervet armed with machetes, axes and staves. The report, further stated that the police and the "judiciary" arrived on the scene in the afternoon; reporters refused to accompany the captain and did not reach the spot until the following day. According to the captain, the bodies were taken away by the murderers and that very evening relatives of the victims carried out a punitive raid on the Gervet community, killing about 12 people, burning houses and slaughtering livestock.

30. The captain's report ends with these words: "Having been alerted to this further incident in the late morning of Friday, 18 January 1991, the security forces, still accompanied by the judiciary, returned to the scene and the above facts were reflected in the judicial report".

31. This version is contradicted by the CHADEL report, the statement by the Justice and Peace Commission, the statements by Mr. Leblanc and testimony by various other persons, compiled in particular by the independent commission of inquiry appointed by Mr. J.B. Aristide, the President Elect, which travelled to the scene of the events with a number of journalists and a military escort. The peasants whom we interviewed on the spot also contradicted this version.

32. We noted that almost all the village houses had been burnt; we were told that bodies had been eaten by dogs, after having been left where they had fallen pending a judicial report.

33. It would seem that, subsequently, the captain in Saint-Marc acknowledged that 18 soldiers had taken part in that incident. Since then, this captain - whom we had met in July 1990 in connection with other massacres - has apparently sought refuge in Port-au-Prince.

34. As a result of this incident, 12 persons are listed as dead or missing, including Gilles Benoit, a man of 75, several are wounded, 494 houses have been burnt and totally destroyed, and 367 families, comprising 2,088 persons, of whom 1,721 are children, have been left homeless. These figures are undoubtedly provisional.

35. It is to be hoped that the courts will for once take up the case in earnest and conduct a thorough inquiry ensuring that justice will be done. A number of NGOs have already compiled sufficient testimony for use by an official inquiry.

2. Attempts to destabilize the democratic process and subsequent reactions

36. The bomb attack which took place at Pétionville on 5 December 1990 at the end of an election rally for candidate J.B. Aristide, who was elected 11 days later, must certainly be classified under this heading. We indicated in our report that the attack killed seven people. Fortunately it did not hold up the electoral process, but that was no doubt the intention. To date, nearly two months after the event, it has still not been explained.

37. This is also true of the attempted coup d'état by Dr. Roger Lafontant and a dozen accomplices, who on the night of 6/7 January 1991 seized an army tank and went to the private residence of Mrs. Ertha Pascal Trouillot the Head of the Provisional Government. They took Mrs. Trouillot to the Presidential Palace, where Roger Lafontant declared himself President and forced her to write a letter of resignation.

38. During the interview she granted us, Mrs. Trouillot described in detail what had happened and the pressure to which she had been subjected.

39. When Roger Lafontant made declarations on radio and television in the middle of the night proclaiming himself Head of State, the people came out into the streets, blocking the main thoroughfares and, in Port-au-Prince, rushed to the Presidential Palace, filling the Place du Champ-de-Mars and the Palace gardens. Was it this pressure, as some say, or the determination of the High Command, as General Abraham told us, that put down the coup? It is too early to say. In any event, Roger Lafontant was arrested in the morning of 7 January and handed over to the judicial authorities, who remanded him in custody.

40. He was brought to the Procurator's office and interrogated by the Government Commissioner for Port-au-Prince, Maître Bayard Vincent, who also interrogated Alphonse Lahens and all the other persons responsible for the coup who are now under arrest. The Government Commissioner assured us that he was carrying out inquiries diligently and had asked the General Headquarters of the Haitian Armed Forces for a list of the military personnel involved in the coup d'état.

41. General Acedius Saint-Louis replied to him, in a letter dated 24 January 1991, that a "Commission of Inquiry had been set up to investigate the matter". He gave an assurance that any information obtained would be communicated as soon as the Commission had completed its work. That point was confirmed to us by General Abraham, who had discharged 12 officers and men from the army. Of these persons the following have been arrested: Lieutenant-Colonel (retired) Gérard E. Louis, Sergeant-Major Jean-Eric Sylla, Corporals Menthor Odilon and Pierre Bénédique and Private Francis Wilfranc. The others are at large.

42. The news of Roger Lafontant's arrest in the morning of 7 January led to reactions of joy among the public, but also to various excesses: killings, "sackings" and vandalism. About 50 supporters or alleged supporters of Duvalierism were killed and a large amount of property was destroyed, shops were looted and burnt, and the old cathedral in Port-au-Prince was set on fire. In all, 74 people are thought to have been killed, including 60 in Port-au-Prince, and more than 150 injured. Various street incidents described

to us by eyewitnesses were particularly violent, some people having been killed by burning tyres around their bodies. The home of the Interior Minister, Maître Joseph Maxi, was ransacked and set ablaze on 7 January.

43. On 17 January 1991 Father Alain Page, a Canadian priest visiting Haiti on a humanitarian mission, was ambushed and killed by a number of still unidentified armed men while he was taking donations of money and equipment to a provincial parish along with other Canadians and a Frenchman.

44. Less well explained is the "sacking" of the Papal Nuncio's Residence above Pétionville. A first group of 80 men broke into the Residence, followed a few moments later by a larger group. The Nuncio himself was molested, his clothes were torn and he received a number of blows. Much more serious, however, was the fate of his secretary, a Zairian priest, who received serious head injuries and suffered a number of fractures of the legs and ribs. Severely traumatized, he was forced to leave Haiti, according to information provided by the Nuncio when he received us. The Nuncio's Residence, which we visited, was burnt down and completely destroyed, as were all its contents, including archives, some of which were reportedly stolen.

45. No official inquiry has so far been opened, although several points have not been clarified. The Papal Nuncio told us, for example, that he had tried to get in touch with the police by telephone at around 8.15 that morning, but without success. He had, in fact, been warned that a group of people were heading towards the Residence and he was seeking protection. We also learnt, from reliable witnesses that the police had been warned about what was happening as early as 7.30 or 7.45, but had not intervened until 9.30. It seems, according to some accounts, that members of the group were carrying walkie-talkies, which is surprising because ordinary people do not usually have access to such equipment.

46. Questions also arise concerning the motives for "sacking" the Papal Nuncio's Residence, the old cathedral and the headquarters of the Episcopal Conference. One view is that the pillagers were looking for the Archbishop of Port-au-Prince, Monsignor François Wolf Ligonde, who on 1 January 1991 had delivered a very strongly-worded homily in the cathedral during the Te Deum service to mark the anniversary of independence. He had said in particular: "... Faced with threats and certain declarations, many ordinary people are even wondering whether there will be a crackdown on civil liberties because the Constitution, as they say, is nothing but paper ... Will the Constitution be violated and ignored, as it always has been in this country, to set up an authoritarian political régime? Are we going to stand idly by as a political police force is set up again? ... They (Christians) have asked themselves whether the leftist trend will not lead Haiti to don the worn-out Bolshevik socialist frock now thrown off by the countries of Eastern Europe ...".

47. Such outspokenness from a prelate who made no secret of his Duvalierist sympathies gave rise to many protests within the Haitian Church. It also provoked violent reactions. Fearing reprisals, Monsignor Ligonde left Haiti on 10 January for the Dominican Republic.

48. Various other deplorable incidents have yet to be satisfactorily explained. One of these was was the break-in which took place at the Electoral Council headquarters on 7 January, the day of the coup d'état.

About 20 military personnel were involved, including Sergeant-Major Dossous, the commander of the guard at the local CEP office. This soldier has been placed under arrest.

49. Another very surprising incident occurred while we were in Haiti, causing the deaths of at least 17 people. In the night of Saturday, 26 January to Sunday 27 January, wild rumours began circulating from about 12.30 a.m. onwards in Port-au-Prince, and in other parts of Haiti, that a coup d'état had been staged by elements from the Dominican Republic led by Franck Romain (the former Mayor of Port-au-Prince) and William Régala. The reports were completely unfounded and had to be denied, in the middle of the night, by the Mayor Elect of Port-au-Prince, Evans Paul, and later by General Herald Abraham.

50. Nevertheless the rumours spread like wildfire, some individuals going from door to door to announce a "coup d'état" that had never taken place. On hearing this news, the inhabitants of working-class districts went out into the streets, set up barricades and engaged in various acts of violence. At Carrefour they attacked a police station and, in another district, two blind musicians were killed, one of them being Ulrick Pierre, known as "Ti Pierre", a very popular singer. At Carrefour, the police apparently fired on the crowd. At least 17 people died that night, because of a completely unfounded rumour spread in ways and by persons unknown. This shows the latent violence which can flare up at any time, and also how difficult it is to determine precisely who is responsible for such acts of violence.

51. On the night of our departure from Haiti, i.e. on 2 February 1991, a telephone call at 3.30 a.m. from Monique Brisson, one of the jurists on the Father Aristide team, alerted us to a horrible incident which had just occurred: the "Family is life" hostel, run until the past few weeks by Father Aristide, had just been attacked by arsonists.

52. The hostel had been operated in a completely open way, taking in abandoned children from the streets and providing them with shelter, meals and education. The details given over the telephone were very sketchy and did not tell us the exact circumstances of the fire. We could establish only that four young children had died and that others had managed to escape. As we left Port-au-Prince at 7 a.m., we were not able to obtain any other information. Those events, like so many others, are particularly serious because they affect children and, through them, are presumably aimed at the President Elect. They are truly barbaric acts.

C. Prospects for 1991

53. The successful elections of 16 December 1990 and 20 January 1991 are a new development of major importance and augur well for the future.

54. Despite the imperfections of the electoral process, which were recognized by the CEP, the United Nations and OAS observers, and the elected representatives themselves, the result of the presidential election is beyond question. All of the very large number of people we spoke to in the course of the eight days told us that for the first time in their history, the people of Haiti had chosen their President. This unprecedented fact is, in itself, an event that is likely to change the history of Haiti in a lasting way. Yet, at

the same time, the increasing manifestations of violence during the month of January, the coup d'état and its various after-effects point to the fragility of that victory.

55. When we left Haiti, five days before the new President took office, the country was in a state of great excitement and actively preparing for the inauguration of the President Elect on 7 February 1991. Symbolically, Fort Dimanche prison, where the Duvalier dictatorship had disposed of its opponents, torturing or killing them, is to be transformed into a museum, and a memorial will be formally dedicated by the new President on 8 February, the day after his inauguration.

56. While an era of hope has opened for the vast majority of the Haitian people, the transition towards democracy that can now really begin will be a period of terrible fragility.

57. Firstly, all the events described in this addendum show the extent to which violence is still present in the daily life of Haiti: between the opponents of any form of democracy, who are nostalgic for a dictatorship that permitted all manner of abuses and corruption and who do not accept the result of the elections, and the popular masses who are ready to use every means, including extreme violence, to hold on to a victory they have been looking forward to for so long, the room for manoeuvre is very small and 1991 will continue to be a year fraught with peril for Haiti and its new Government.

58. Secondly, the scale of the task is considerable. It involves reactivating the economy of a debilitated country where performance indicators are extremely low, unemployment is high, a large part of the population live below the poverty line and institutions virtually have to be built from scratch.

59. The Constitution of March 1987 approved by the Haitian people in a plebiscite will, for the first time, be fully and completely implemented. The National Assembly and Senate are shortly to elect their Presidents, and the President of the Republic will appoint a Prime Minister and a Government that will have to get down to work: many legislative reforms are due in all areas; the judicial system has to be overhauled, partly because some retired appeals court judges have not been replaced, but mainly because the problems of training are immense in the field of justice, the police and the applicable provisions required in order to comply with the various covenants and conventions.

60. The Minister for Foreign Affairs informed us that the International Covenant on Civil and Political Rights had been published in the official gazette, the Moniteur, on 7 January 1991. The instrument of accession was sent to United Nations Headquarters in New York while we were in Port-au-Prince.

61. Furthermore, in our various conversations with them, the close advisers of the President Elect took the opportunity to indicate the firm intention of ratifying all the international human rights instruments and of amending institutions and practices with a view to implementing those instruments and respecting the Constitution of March 1987. However, they did not conceal from us the great difficulty of that task and their desire to obtain assistance

from the international community, and in particular the Centre for Human Rights, for that purpose. A formal request to that effect would be made in the first weeks of the new Government.

II. CONCLUSIONS

62. We can therefore supplement the provisional conclusions set out in the report dated 21 December 1990 as follows:

We reiterate paragraph 181 (a) of the report;

Subparagraph (b): The International Covenant on Civil and Political Rights has now been published in the official gazette of the Republic of Haiti and the instrument of accession has been sent to United Nations Headquarters. The President Elect is to ratify those conventions which have not yet been ratified;

We reiterate subparagraphs (c), (d), (e) and (f);

Subparagraph (g): The most positive aspect of the period just elapsed has been the successful elections of 16 December 1990, 6 January and 20 January 1991, which have made it possible to appoint a President of the Republic, a Parliament consisting of two chambers (Senate and Chamber of Deputies), 135 three-member municipal councils and 565 three-member local district administrative councils (CASECs);

Subparagraph (h): The 1987 Constitution is now fully restored; the President of the Republic has been elected by universal suffrage and the legal institutions are beginning to be put in place.

We reiterate subparagraph (i).

III. RECOMMENDATIONS

63. In conformity with his mandate under resolutions 1987/13, 1988/51, 1989/73 and 1990/56 of the Commission on Human Rights, the Expert submits the following recommendations:

(a) The Commission must continue to monitor the human rights situation in Haiti, with a view to helping that country to consolidate the incipient transition towards democracy;

(b) It should express its concern at the persistence of serious violations of human rights and fundamental freedoms, despite the prospect of real democratic change;

(c) Reiterate and add: "This independent expert should report on the situation and foster the provision of technical assistance";

(d) Reiterate and add: "... and respond to the demand for justice consistently made by the Haitian people since 1986".

64. These are the recommendations submitted by the Expert as a result of his fourth mission to Haiti. He considers it of the utmost importance to pursue

the dialogue with the new Government of Haiti, whose President Elect, is to take up office on 7 February 1991, as well as with the elected Parliament and the Haitian authorities in general.

65. The establishment of a fruitful and regular exchange with a view to improving the human rights situation in Haiti is especially important considering that a desire for radical change has been expressed by the new President of the Republic duly chosen by the people on the basis of universal suffrage in an election which gave him a very large majority.